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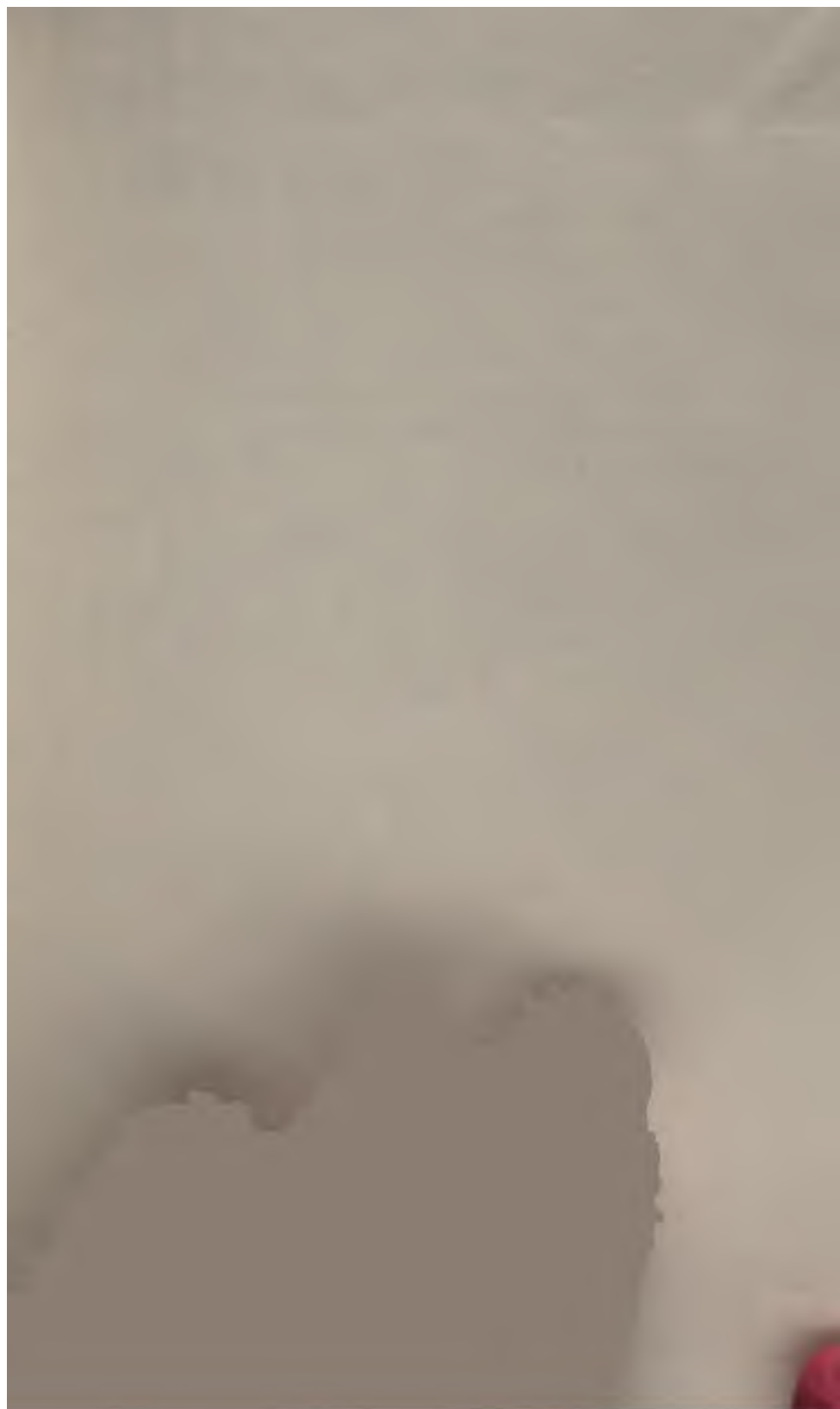
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**FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTI-
CIDE REFORM ACT AND PESTICIDE IMPORT AND
EXPORT ACT OF 1983**

HEARINGS

BEFORE THE

SUBCOMMITTEE ON DEPARTMENT OPERATIONS,
RESEARCH, AND FOREIGN AGRICULTURE

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

H.R. 3254 and H.R. 3818

OCTOBER 6 AND NOVEMBER 2, 1983

DIS RECORD ONLY:

Serial No. 98-53



Printed for the use of the Committee on Agriculture



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FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE REFORM ACT AND PESTICIDE IMPORT AND EXPORT ACT OF 1983

THURSDAY, OCTOBER 6, 1983

**HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DEPARTMENT OPERATIONS,
RESEARCH, AND FOREIGN AGRICULTURE,
COMMITTEE ON AGRICULTURE,
Washington, D.C.**

The subcommittee met, pursuant to call, at 9:30 a.m., in room 1300, Longworth House Office Building, Hon. George E. Brown, Jr. (chairman of the subcommittee) presiding.

Members present: Representatives Staggers, Penny, Volkmer, Olin, Roberts, Gunderson, Evans of Iowa, and Franklin.

Staff present: Cristobal P. Aldrete, special counsel; Christine D. Abram, clerk; Charles Benbrook, Nick Ashmore, Bernard Brenner, and Gerald R. Jorgensen.

OPENING STATEMENT OF HON. GEORGE E. BROWN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. BROWN. The subcommittee would like to get underway, if we may have the cooperation of the audience.

I and our distinguished ranking Member both have brief opening statements which protocol requires that we inflict upon you, so I would like to welcome all of you in attendance at today's hearings.

The subcommittee has before it two bills amending the Federal Insecticide, Fungicide, and Rodenticide Act. H.R. 3818, "The Federal Insecticide, Fungicide, and Rodenticide Reform Act," was introduced August 4, 1983 by my friend and colleague on the Committee on Agriculture, the Honorable Tom Harkin of Iowa. This major piece of legislation contains a number of important amendments to the FIFRA statute. I have cosponsored this bill because I felt it would go a long way toward solving at least some of the seemingly intractable problems with the statute.

We will also hear testimony today on H.R. 3254, the "Pesticide Import and Export Act of 1983," introduced on June 8, 1983 by the Honorable Cecil Heftel of Hawaii.

[H.R. 3254 and H.R. 3818 appear at the conclusion of the hearing.]

Mr. BROWN. This legislation addresses several critical issues that arose as the result of pesticide use abroad. For several years, I have taken a keen interest in efforts by the United States to foster safer and more efficacious use of pesticides in the developing world. I

have always felt this country had a moral and ethical obligation to share the technical information and expertise needed to assure safe use of pesticides in lesser developed nations.

Our recent hearings on section 17 of FIFRA painted a rather foreboding picture of the dimensions of the unmet challenges in this area. I am sure we will learn more today about the human suffering which occurs regularly as a result of pesticide use and misuse in many lesser developed countries. I am hopeful that H.R. 3254 will help us identify some effective ways to encourage safer use of pesticides overseas.

Several learned witnesses appearing before this subcommittee have correctly pointed out that legislation cannot, in and of itself, solve pesticide problems. This is a fact of life whether the issue is ground water contamination in California or a poisoning incident in Sri Lanka.

Today we begin work on another set of major amendments to the FIFRA statute. In 1981 and 1982, this subcommittee labored long and hard to pass H.R. 5203, another comprehensive bill containing a wide range of basic amendments to the statute. The political climate throughout that period was characterized by a high degree of enthusiasm for simplifying Government and fostering regulatory reform, including simplifying environmental regulations and relaxing standards.

In 1981, the pesticide industry presented this subcommittee with a carefully conceived set of amendments addressing what industry trade associations felt to be the more burdensome features of the Act. With equal unanimity, the public health and environmental communities expressed opposition to industry sponsored amendments. After countless sessions and the investment of a great deal of energy by the members of this subcommittee during a period spanning more than a year, our efforts were rewarded with a House passed bill not taken up by the Senate. Now we face an even larger list of unresolved legislative issues, and begin the task of resolving them with a healthy respect for how difficult, if not impossible, it is to find stable political compromises on controversial pesticide problems.

As we consider FIFRA legislation today, we face a situation similar in many ways to the situation on June 16, 1981, when we began hearing the testimony which laid the foundation for much of H.R. 5203. The problems addressed by the bills before us today are just as longstanding and difficult as the ones addressed in the legislative proposals advanced in 1981.

Of course, there are also some major differences as we begin our hearing today. The political winds have shifted rather dramatically in the past 2 years. The public health and environmental communities have seized the initiative and are actively pushing legislative reforms while it is the industry which is now displaying a marked lack of enthusiasm for the legislative process.

This subcommittee has also devoted considerable time to oversight activities in an effort to resolve administrative and scientific problems in the pesticide program. Hopefully our efforts have produced some useful guidance to the agency, and perhaps helped convince the administration that additional resources are needed in the pesticide program.

I am attaching to my statement two recent articles addressing some of the issues previously explored by this subcommittee. I am aware that the Agency is now trying to determine an effective set of actions to improve the overall quality of pesticide data and the insightfulness of the Agency's scientific reviews. There is no way, unfortunately, to legislate good science, although out of a sense of frustration this subcommittee might soon decide to give it a try. We will, in any event, keep striving toward an institutional context conducive to and compatible with a high degree of professionalism and competence in EPA's scientific endeavors.

I would like to turn now to the subcommittee's distinguished ranking minority member, the Honorable Pat Roberts, for any opening remarks he might like to make.

[The attachments follow:]

The Sacramento Bee

Sunday, September 25, 1983

Business As Usual: Another Scandal In The Making The EPA Pesticide 'Studies' That Weren't Done

By Keith Schneider

WASHINGTON — Last July, in a well-attended Washington press conference, the Environmental Protection Agency released a long-awaited report summarizing the results of a seven-year investigation of the Industrial Bio-Test Laboratories scandal, widely regarded as the most massive scientific fraud in U.S. history.

The agency announced that after years of work, the IBT situation was finally "under control" and that "major portions" of the scientific studies prepared by IBT and used to license 140 popular pesticides had been "replaced."

Last week, however, staff members in EPA's pesticide office disclosed that the statistics on the number of "replaced" IBT studies had been deliberately "groomed" for the press conference to deceive the public. The staff members said EPA still lacks basic health

Free-lance writer Keith Schneider last fall broke some of the first stories — they were published in Forum — on the EPA scandals that led to the ouster of top agency officials this year. Schneider wrote this article for Network News Inc.

and safety information on more than 100 commonly used pesticides tested by IBT.

IBT, once the nation's largest independent chemical testing laboratory, was closed by the U.S. Justice Department in 1978 after federal investigators discovered that thousands of scientific safety tests, used to register hundreds of pesticides, may have been deliberately falsified. Three IBT officials are currently on trial in U.S. District Court in Chicago and charged with fabricating scientific data. The prosecution of a fourth defendant, Dr. Joseph C. Calandra, IBT's founder and former president, was suspended in July after Calandra was hospital-

ized with a heart ailment.

An internal EPA memo on the IBT affair, not previously available to the public, and dated August 30, 1983, shows that the agency has "reviewed and accepted" just 89 replacement studies for the more than 600 invalidated scientific safety tests produced by IBT to register more than 140 pesticides. Only seven of the replacement tests are the important "chronic" studies which indicate problems associated with cancer, birth defects and long-term toxic effects.

THE INTERNAL MEMO also shows that in more than 200 other cases — which the EPA termed "replaced" in July — the chemical companies have merely agreed to start or have just begun long-term studies to repeat invalid IBT studies.

In the July summary report, the EPA said that more than 200 separate studies, including dozens of long-term cancer and birth defect tests performed on laboratory

animals, had been "replaced." Many reporters and environmental leaders who attended the press conference said they interpreted the term to mean that EPA had actually received and accepted those studies.

But the July public summary differs sharply from the August internal memo in its definition of the term "replaced." In fact, the internal document shows that six distinct subcategories were lumped together to produce the "replaced" category. The internal document shows that along with those studies which had actually been replaced, the agency decided to include the following:

- 71 studies currently being conducted by chemical companies.
- 89 studies partially completed by companies.
- 34 studies finished by the companies and under review at the EPA.
- 59 studies in which chemical companies are "committed to replace the study."

See EPA, Forum 6

• 35 studies in which "discussions are ongoing between the company and the agency concerning replacement." EPA didn't explain in July how the replaced category was determined. Moreover, environmental leaders have repeatedly asked the EPA for clarification. Jay Feldman, national coordinator of The National Coalition Against the Misuse of Pesticides (NCAMP), said his request went unanswered by the agency for nearly a month.

"It's difficult to believe that after all the problems with IBT studies, the EPA still finds it necessary to deliberately confuse and mislead the public," said Feldman. "What we need desperately now is clarification about what is actually known about all the IBT studies."

In a meeting with environmental leaders at the EPA late last week, Edwin Johnson, chief of EPA's pesticide program, defended the agency's decision to present the replaced category as it appeared. "We collapsed the categories down because there were too many subcategories in our original draft report," Johnson said. "It was a way of simplifying the material. It was not an effort, in any way, to deceive the press or the public. In hindsight, maybe it was a poor use of the term 'replaced.' Perhaps we should have used another term."

But an EPA staff member familiar with the report's preparation contradicted Johnson. "The report as it came out at the press conference was not accurate," said the EPA staffer who asked to remain unidentified. "There was a decision

made at the highest level in the pesticide branch to groom the statistics. It was stupid."

The latest dispute in the handling of the IBT situation comes at a time when the pesticide program is reeling under charges by several congressmen and senators that the quality of the scientific studies supporting decisions to license pesticides is "uniformly poor." A recent investigation by the staff of a House Agriculture subcommittee revealed that just a fraction of 60 major pesticides have been tested in compliance with modern data requirements.

Johnson said last week the agency has begun a program to identify dozens of scientific safety tests produced by several other large laboratories which have been under investigation by the EPA and the Food and Drug Administration for allegedly poor scientific research. Like the IBT studies, these tests were used to register many pesticides for the American market.

In addition, the agency has begun investigating charges that agency toxicologists have plagiarized the results of studies commissioned by several chemical companies and presented them as their own. The investigation, now more than two months old, resulted from charges made late last year that an EPA toxicologist "cut and pasted" a company-produced scientific study on a herbicide made by Uniroyal onto EPA stationery, and used the results to support registration of the new agricultural chemical.

Johnson said the investigators have not determined how many pesticides may be involved in the cut-and-paste operation. But Kevin Keaney, a special assistant to Johnson, said this form of fabrication "was not an isolated event by any means."

Sources monitoring the investigation in the agency and on Capitol Hill say the cut-and-paste probe may turn out to be "just as significant" as the discovery of the fraudulent data from IBT. "The EPA is trying to portray itself as moving ahead and gaining a handle on bad science," said one congressional staff member who asked to remain unidentified. "But this new investigation is likely to be very extensive, touching on many pesticides as IBT."

EPA used company data for reports

By Jeff Neenath
Washington Bureau

WASHINGTON — Environmental Protection Agency scientists assigned to study the toxic properties of pesticides have relied unquestioningly on evaluations provided to them by companies that manufactured the chemicals, consultants hired by EPA have determined.

The consultants examined more than 500 individual EPA studies and found that a "substantial" amount of material appearing in over 30 percent of them was written not by government scientists but by officials of affected companies and their contractors, sources said last week.

Further, in 20 percent of the studies examined by the consultants, "virtually all" of the EPA evaluation was copied verbatim from pesticide company reports, the sources said.

The material examined by the consultants was written by EPA pesticide "reviewers" in fiscal years 1979, 1980, 1981 and 1982.

Reviewers play a key role in the process by which the agency determines whether the public should be exposed to a pesticide and, if so, how much. They are supposed to interpret raw health and safety data from laboratories

hired by chemical manufacturers.

EPA officials say further study by the consultants will be necessary to determine whether evidence having a significant bearing on the public health was overlooked.

However, the indication that self-serving company material was substituted for what were meant to be independent EPA analyses raises questions about the validity of a critical step in the regulation of substances that may cause cancer, birth defects, mutations or other health problems.

The discovery was called "alarming" by the chairman of a House subcommittee that has investigated EPA's handling of pesticides.

"People use reviews written by chemical companies when they don't have time to write their own material," said Rep. George Brown (D-Calif.), chairman of the House Agriculture subcommittee on department operations, research and foreign agriculture. "When scientific reviewers have to cut corners, I don't think they do as good scientific work as they should do."

The study of the EPA reviews of pesticide data was conducted by the Battelle Memorial Institute. At EPA's request, Battelle is now doing a follow-up "phase 2" study to determine whether government scientists missed impor-

tant information. Sources said the second study has turned up some evidence that reviewers missed or ignored pertinent information, but the extent of this was clear last week.

Under the Federal Insecticide, Fungicide and Rodenticide Act, pesticide manufacturers must report raw data from animal tests designed to determine whether a chemical causes cancer, mutations, birth defects and other chronic or acute health problems.

EPA uses this data to assess risk and determine such factors as the "no observable effect level" and the "acceptable daily intake."

Asked recently about the "cut-and-paste reviews," as the copied evaluations are being called at EPA, Edwin Johnson, director of the agency's office of pesticide programs, said further study is necessary.

The important consideration, Johnson said, should be whether the scientists failed to make independent evaluations of pesticides or, having agreed with the companies involved and simply used the company's words to say so.

The discovery comes at a time when other problems in the government's assessment of the risk posed to society by toxic substances have been coming to light.

**OPENING STATEMENT OF HON. PAT ROBERTS, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS**

Mr. ROBERTS. Thank you, Mr. Chairman.

As I have indicated in our discussions, I personally feel we are not yet ready to consider major amendments to FIFRA, and more especially in regard to any markup of this legislation. Don't get me wrong. I fully recognize that certain steps need to be taken, and I stand ready to work with all concerned, but I think the timing is important. We do have to start sometime and I know that certain factions feel that FIFRA is overdue for extensive rewrite, but there are others who have amendments to offer, depending on certain decisions that will be forthcoming.

I think our job is not made easier by events. I do feel we need to await the decision of the Supreme Court in the case involving *Mon-santo* because of the implications that that decision may hold for two important sections of FIFRA.

Further, the personnel changes at EPA are still occurring and the replacement for Dr. Todhunter has not been named or confirmed though we all know the wheels are in motion to name John Moore, former deputy to the national toxicology program for that position.

As was indicated when we considered the legislation to reauthorize FIFRA, EPA should be given the opportunity to get its house in order. I feel that the new Administrator, Bill Ruckelshaus, recognizes the importance of upgrading the scientific capabilities of EPA and is taking steps to really accomplish that task.

Mr. Chairman, you and I testified during the process of the appropriations measure last year that additional funding and personnel were needed, and that has been accomplished, as you indicated, on June 23 in your floor statement, and I quote,

We should not expect miracles though. Several years will be required to establish in EPA the level of scientific expertise and excellence necessary if that agency is to regularly and routinely carry out its vital duties on an equal scientific footing with the private sector laboratories conducting and presenting studies for submission to the Agency in support of regulatory actions.

By the same token, it seems to me we need to give the agency the opportunity to advise the subcommittee of what they determine can be done administratively and what legislation is needed to assist them in doing a better job. I think all concerned recognize that improvements are needed at the Agency without question. It is my hope that the Administrator will testify at our next hearing and indicate what his plans are for the Office of Pesticide programs.

Another observation I have is that there are other players in this scenario other than the proponents of H.R. 3818, and I haven't observed any moves on the part of anyone to effectively compromise legislation. Legislation that is adopted and signed into law is usually legislation that is acceptable to most parties, and because of the give and take there is, we have to effect a certain amount of compromise. I can vividly recall the effort it took to pass H.R. 5203 last year.

My question to all of the participants is this: Wouldn't it be better to proceed and try and develop some compromise legislation

most can support, than to proceed hastily and create some positions that will only cause hard feelings and probably in the long-run actually accomplish nothing?

The bottom line, Mr. Chairman, is that we must produce responsible legislation that will work and do the job of protecting the health and safety of all, but yet allow the farmer to have access to the chemicals and pesticides necessary in operating and managing a viable and commercial farming operation.

In my view and in the view of over 30 farm and trade organizations, H.R. 3818 does not do this. I suggest we continue to work on legislation by directing staff to work together with all of the parties involved to produce legislation that members of the House Agriculture Committee can be proud of and would support.

If we cannot reach this accommodation then reluctantly I will be forced to oppose H.R. 3818, and actively oppose adoption by this subcommittee.

That is my statement.

Mr. BROWN. Thank you very much, Mr. Roberts. Your statement, of course, contains much wisdom, as usual.

I would like now to recognize our first witness, the Honorable Tom Harkin, a distinguished Member of Congress and of this committee, who has worked very hard trying to bring about some improvements in the FIFRA program and is the primary author of the legislation that we have before us.

Mr. Harkin, you may proceed with your statement in any way that you wish.

STATEMENT OF HON. TOM HARKIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. HARKIN. Thank you very much, Mr. Chairman.

Mr. Chairman, and members of the subcommittee, I want to thank you, Mr. Chairman, for the opportunity to testify this morning on the merits of H.R. 3818, the so-called FIFRA Reform Act.

I want to congratulate you for the expeditious scheduling of this hearing and want to thank you publicly for your leadership on this most difficult and contentious issue, and for the assistance and counsel provided by you and your staff in the drafting of H.R. 3818.

Mr. BROWN. We don't want to take too much credit for that.

Mr. HARKIN. Mr. Chairman, responding to my colleague and good friend from Kansas, I do understand the legislative process and I know the process of debate and of compromise and certainly that is anticipated in this legislation.

I would hope that prior to taking a firm and irreconcilable stand against that that we could work together to develop legislation that will, in fact, pass the House. However, we have to start someplace and I feel very strongly that H.R. 3818 is a good starting point.

In previous hearings by your subcommittee you have done an excellent job of documenting why amendments are, in fact, needed to improve FIFRA. Likewise, the public has become very aware of the current deficiencies in pesticide regulation. Failure to convincingly address the serious pesticide problems before this subcommittee will only serve to further erode the public's confidence in pesticide

use and fuel the desires by other committees in this Congress wishing to share jurisdiction on this important issue.

In my view, either of these developments would serve to harm agriculture, particularly our farmers, who have come to rely upon the considerable economic benefits that pesticides provide. I also think it is unfortunate that the recurrent uproar over pesticide program failings continues to distract public attention from the major strides made by the industry and Agency in the basic sciences involved in pesticide testing and regulation.

I say, as chairman of another subcommittee of this Agriculture Committee, in the recent past my subcommittee had legislation before it in the last session of Congress which many in the industry, a certain industry that falls under my jurisdiction, felt would be inimical to their interests—I thought it was, too—but I felt it might be best for us to have the hearings and to bring forth the information, to bring it out on the public table, and take a look at it.

We didn't do it, and so this year that legislation has found its way into the subcommittees and other committees of the House, which are more inimical to the interests of agriculture than we are. So that is why I make this statement here, that if we don't do something in this committee, there is going to be another committee of this House that is going to do it, and those who have a better feel for agriculture, like I know we all do, are going to be on the outside looking in.

Some will contend that many of the current deficiencies in pesticide regulation can be corrected administratively without legislation. While this argument is no doubt technically valid, at least in a few areas addressed by H.R. 3818, there is now overwhelming evidence that several substantive amendments to FIFRA are necessary. Public confidence will not be restored in the Agency or the pesticide program if the current malaise is allowed to persist. I do not object to administrative solutions to problems, but I would urge the subcommittee to not be further sidetracked by assurances that administrative remedies are, or soon will be under serious consideration.

Mr. Chairman, I have been here not quite as long as you have. I came in 1975 and we first started having our hearings on FIFRA in 1976, and that was during the Ford administration. Then we were here during the Carter administration. We heard the same thing—administratively they are going to take care of it. Now we are under a new administration and we are hearing the same song and dance. We will have been here now 9 years and nothing has happened administratively. So I think that to just listen to that serene song is to put off the day of reckoning even further.

Likewise, others will attempt to cast this bill as antiagriculture. Clearly the focus of this bill is on the integrity of the registration process itself. In the last several years, the FIFRA statute has been plagued by false starts, blind alleys, and legal challenges. As a result, regulatory requirements have been imposed on the chemical manufacturers in an inequitable fashion. Commonsense and sound science have too often been swept aside as the Agency has tried to hurriedly respond to emerging legal, political, and environmental crises.

The chaotic record of EPA in the area of pesticide registration has not served anyone's interests, at least not the interests of farmers, ranchers, and others dependent on pesticides for their livelihood. EPA's spotty record has unnecessarily and, in many cases, unjustifiably eroded the public's confidence in the safety of chemical pest control practices.

H.R. 3818 is not antiagriculture. I am confident if farmers know what really goes on in the pesticide program, and how the inherent problems in this statute actually affect their health and pocket-books, I think farmers would add their voice to the chorus now calling for major reforms in the pesticide program.

A major focus of H.R. 3818 is to improve the effectiveness of the pesticide program at the front end of the process. More carefully conceived regulatory decisions will, in the end, save Agency resources and contribute to the orderly evolution of safer pesticides and pest control technology.

FIFRA needs to be amended to more clearly and forcefully direct the resources of EPA to the task of protecting the public health. Far, far too much time and effort within EPA is essentially wasted because of indecision, procedural hurdles, and conflicting political, judicial and statutory directives. The pesticide program has become in effect scared of its own shadow. We have shackled the program with provisions of law and procedures which, as a matter of policy, expose the Agency to many forms of political pressures from all perspectives and from both sides of the aisle. Congress must take a fair share of the blame for the fact that most important regulatory actions take such a very long time to complete.

Mr. Chairman, and Members of the subcommittee, pesticides are showing up in people's drinking water all over the country. The registration and regulatory processes are in gridlock because of innumerable legal and administrative challenges, and the public is wondering if the debacle of EPA's superfund program over the last 3 years was unique, or only the first to be uncovered. It seems to me the time for this subcommittee to take decisive action has come. I urge the subcommittee to act favorably on H.R. 3818, and move this legislation as quickly as possible.

Just as a footnote, Mr. Chairman, I would add that I believe, as I said in my formal statement, that it is in everybody's interest, and I would just again publicly give a word of advice or warning to my friends in the industry, the pesticide manufacturing industry, that no longer can we stick our heads in the sand and hope that the problem will go away forever. Something is going to happen at some time. Some major event is going to occur and the public hue and outcry in that event will be such, I believe, to be absolutely detrimental to the industry itself and subsequently to my farmers. That is why I think the time for action is now.

Thank you.

Mr. BROWN. Do you think the industry ought to be grateful for having such a reasonable, friendly committee as they have here to deal with?

Mr. HARKIN. Well, I agree with that, Mr. Chairman. I agree with that. I think, Mr. Chairman, wait until they get to the Health Subcommittee of the Commerce Committee.

Mr. BROWN. You have got a point there.

Mr. HARKIN. I know it happened to me in my subcommittee last Congress. I had a bill—I am not going to go into the details now—it is in that subcommittee and you wait and see, they are not going to get any friendly hearings over there.

Mr. BROWN. Mr. Roberts.

Mr. ROBERTS. Thank you, Mr. Chairman.

Let me stress again, in my statement where I said—I sound like I am writing country western music—"don't get me wrong." I fully agree certain steps need to be taken and I stand ready to work with all concerned. We are not going to put our heads in the sand. I want to get a compromise that works, as opposed to just an issue. I would hope that when the EPA does come for the hearing, the next hearing, it can be represented by the Administrator. If there is a song and dance or a siren song, you are going to find this Member of Congress most upset with that.

As a matter of fact, I was just listening to Larry Gatlin in my office, who said, "The only thing she really meant was when she said goodbye." If the Administrator comes up here with something like that, I am not going to put up with it and you are not going to put up with it, and we are going to do something about it.

I hope we can do that, Mr. Chairman. Let the record show that I stand in admiration of my colleague and I work with him on the full committee. I had to educate him all the time according to wheat. He has to educate me according to corn. We will work it out. I hope we can do that with this bill.

Having said that, I note that in your statement here on page 4, "H.R. 3818 is not antiagriculture. I am confident if farmers knew what really goes on in the pesticide program and how the inherent problems in this statute actually affect their health and pocket-books, they would be for this bill."

But, I have a letter here that I am sure all members of the subcommittee received. I am sure you received it as well, saying "the undersigned organization and their membership oppose H.R. 3818 as written," and it has got a laundry list here that is over 30 major farm organizations. And I guess my question is, can we work this out? Can you? I am assuming these farm organizations have gone through the bill in some detail and have some serious objections to this, and I am wondering if you can comment on that?

Mr. HARKIN. Let me just refer back to June 1981, the American Farm Bureau Federation sent a letter up here—I am sorry, I don't have the full letter, but I have a quote here: "EPA has failed to review these product registrations under the more demanding standards of today's laws and according to EPA's testimony a month ago, it may take up to 40 years to complete the job."

That is the American Farm Bureau Federation believes EPA's record is a failure to protect farmers, ranchers and other users, the public and the environment. That was 2 years ago. Nothing has changed. I don't know why now they would be changing.

I have been informed by counsel that the Farm Bureau is not on that list to which you refer. But I would think that while these organization's, Pat, that you have on there might be opposed to everything in H.R. 3818—

Mr. ROBERTS. I don't think everything. I think as a matter of fact—I apologize for interrupting—I think the American Farm

Bureau sent its own letter and they tend to do that, as you know, on several things. But at any rate, we have got soybeans folks, wood preservers, apples, we have got wheat, we have got the cattlemen, we have got corn growers, we have got about everything you want that we could classify as a farm organization. And I don't think they are opposed to the bill in total per se, they just have some real concerns about it, and I think their membership is now being alerted to this, and what I want to avoid is a confrontation here where we don't achieve anything.

Mr. HARKIN. I misspoke myself. I don't think they are opposed to everything in the bill. I think there are some provisions in the bill that they would be supportive of, and that is why I say the bill is a good vehicle to start the process of seeking some compromises with these organizations.

What I was saying is I hope they don't come forward and say we opposed H.R. 3818 period, fully and finally, that only sets up that confrontation which we don't need.

Mr. ROBERTS. I have a letter here from the Michigan Farm Bureau which I am sure is probably representative of the parent organization and also to some extent at least, speaks to the issues of concern by over 30 farm organizations here, and they deal with four specific things. Rather than take up the subcommittee's time at this particular time, let's meet over these objections and we can go over them on an individual basis.

Mr. BROWN. Do you wish to include any of these communications in the record?

Mr. ROBERTS. I think for the record, I would like to include the letter I have received from the 30 some farm organizations in regard to H.R. 3818, and I think also for the record, I would like to include a letter from the Michigan Farm Bureau, which is much more specific, Mr. Chairman, with regard to some objections. I think they do reflect, to a large extent, some of the major concerns that these organizations have.

Mr. BROWN. Without objection, the correspondence will be put in the record.

[The letters follow:]

Farm Bureau

MICHIGAN FARM BUREAU
7373 WEST SAGINAW HIGHWAY — BOX 30960 LANSING, MICHIGAN 48909

FOR THE RECORD

(517) 323-7000

September 29, 1983

Honorable Pat Roberts
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Roberts:

Michigan Farm Bureau is opposed to H.R. 3818 which would amend the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) now before the House Agriculture Committee.

The provisions of H.R. 3818 would have serious consequences to the more than 80,000 Michigan Farm Bureau members, most of who use pesticides in their farm operations.

Of particular concern to Michigan Farm Bureau are the following provisions of H.R. 3818:

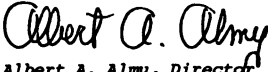
1. Section 4 makes it clear the Administrator shall cancel pesticides when contamination of groundwater or other problems are discussed. Farm Bureau does not support groundwater contamination from pesticides or any other chemical. However, contamination could occur from a major spill completely unrelated to pesticide use on crops. It is our understanding that contamination from such a spill could result in cancellation of the pesticide under Section 4.
2. Section 7 would virtually prevent any future use of a product that has been cancelled, suspended or withdrawn. Michigan Farm Bureau believes future use of a cancelled, suspended or withdrawn product should be allowed if new evidence as to safety, etc. provides justification.
3. Section 16 seriously limits state authority to register pesticides for special local needs. Michigan Farm Bureau believes state flexibility to respond to special local needs must be preserved.
4. Section 17 requires the Administrator to issue regulations requiring the safe use of pesticides. Michigan Farm Bureau strongly supports safe use of pesticides. However, the regulations require consideration of the need for buffer

Honorable Pat Roberts
September 29, 1983
Page 2

zones which we believe could prevent an entire field from being treated, the posting of treated fields which we believe would create a negative public image for pesticides and food products and the prior warning of neighbors before pesticides could be applied which we believe would cause unnecessary public fear and be very time consuming for many individual farmers.

Michigan Farm Bureau believes that H.R. 3818 is unnecessary regulation of pesticides and urges its defeat.

Sincerely,

A handwritten signature in cursive script that reads "Albert A. Almy". The signature is written in dark ink and is positioned above the typed name.

Albert A. Almy, Director
Public Affairs Division

jv

FOR THE RECORD

September 20, 1983

The Honorable Pat Roberts
U. S. House of Representatives
1519 Longworth House Office Building
Washington, D. C. 20515

Dear Mr. Roberts:

The undersigned organizations and their membership oppose H.R. 3818, as an amendment to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). We are opposed to H.R. 3818 because the bill contains numerous amendments to the underlying FIFRA statute which would change the basic thrust of FIFRA, limit EPA's ability to make fair and reasonable decisions, and effectively curtail research, development and marketing of pesticides--all without adequate justification.

Passage of these amendments to FIFRA at this time is most certainly premature and unnecessary. The new Administrator and the new Assistant Administrator for Pesticides and Toxic Substances should be permitted sufficient time to review the Agency's priorities, and to review specifically FIFRA and the pesticide programs before any changes in the statute are proposed.

Additionally, the Department Operations, Research and Foreign Agriculture subcommittee should wait until the Supreme Court has had an opportunity to review the constitutionality of key sections of the Act in Monsanto v. EPA (E.D. Missouri, May 9, 1983) before undertaking a comprehensive revision of the basic FIFRA statute.

We take exception to H.R. 3818 for a number of important reasons, some of which are noted. Some of us may be in contact with you concerning our specific concerns and objections to the bill.

All of us share a common concern that all pesticides, whether used nationally or within a particular state, are safe and effective for their intended use and that they do not pose unreasonable risks to man and his environment. We look forward to working with the subcommittee and full Agriculture Committee on these important matters.

Sincerely,

American Association of Nurserymen

American Pulpwood Association

American Seed Trade Association
 American Soybean Association
 American Wood Preservers Institute
 Chamber of Commerce of the USA
 Chemical Specialties Manufacturers Association
 Farm & Industrial Equipment Institute
 Interior Plantscape Association
 International Apple Institute
 International Sanitary Supply Association
 Lawn Care Association of America
 National Agricultural Aviation Association
 National Agricultural Chemicals Association
 National Arborist Association
 National Association of Wheat Growers
 National Cattlemen's Association
 National Club Association
 National Corn Growers Association
 National Cotton Council of America
 National Council of Agricultural Employees
 National Council of Farmer Cooperatives
 National Fertilizer Solutions Association
 National Food Processors Association
 National Forest Products Association
 National Pest Control Association, Inc.
 Pesticide Producers Association
 Society of American Florists
 Society of American Wood Preservers, Inc.
 Southern Agricultural Chemical Association
 United Fresh Fruit & Vegetable Association
 U. S. Beet Sugar Association
 Western Agricultural Chemicals Association

Mr. HARKIN. If I could respond? I have here the letter dated September 20, 1983. It starts with the American Association of Nurses and ends with Western Agriculture Chemical Association. Could I comment on that?

Mr. BROWN. Yes, sir.

Mr. HARKIN. There is one paragraph in there that says that this subcommittee should wait until the Supreme Court has had an opportunity to review the constitutionality of these sections of the act in the *Monsanto* case.

H.R. 3818 really goes around that case in itself. That case basically involved the very heart of FIFRA, the registration process of section 3. H.R. 3818 doesn't really deal with that. We go around that and deal with the various other numbers around that. So I don't think we really have to wait. I think to wait for this is again just another delay that is going to exacerbate the situation.

Mr. BROWN. Mr. Olin.

Mr. OLIN. I would certainly like to compliment the gentleman from Iowa for submitting this legislation and getting the process started. It is very much needed and it is very timely. I hope that the gentleman will not be unduly concerned as we go through the process of really analyzing the legislation, hearing all points of view and trying to develop whatever modifications that are needed in order to come out with a bill that will have broad support.

So I hope that none of us take a completely hard position with regard to the bill in total or its parts, until we have had a chance really to open up a hearing of all the views that relate to the matter. The subject is extremely important, as we all know. It is a highly technical subject, it is not an exact science, and we need to come out with a bill that is going to have broad support and will be a balanced bill that will get wide acceptance in the Congress and the administration and elsewhere. So this will be my objective as we go through this.

I commend you for getting the process started. It is very timely to start this process. It might take a little while.

Mr. HARKIN. Thank you very much.

As I have said, I have always been willing to try to sit down with all sides on this and try to work something out, but in the beginning that is hard to do. You have to get something on the table, then you move ahead on that. That is my whole point.

Thank you.

Mr. BROWN. Mr. Franklin.

Mr. FRANKLIN. No questions.

Mr. BROWN. Mr. Staggers.

Mr. STAGGERS. Thank you, Mr. Chairman.

I would also like to commend the gentleman. I don't have any questions. I would like to commend my colleague for his work that he has done on this.

I also look forward to working with you on what I would view as very important legislation. I would also like to think what I heard was that this would provide a vehicle for compromise. I thought I heard you say that in response to Mr. Roberts. I think that is a good way to look at it, but also I think the polar star we should keep in sight is reflective in your statement on page 4, "FIFRA needs to be amended to clearly and forcefully direct the resources

of EPA to the task of protecting the public health." I don't think we should lose sight of that. It is my understanding that is what EPA and FIFRA is supposed to be all about.

I do look forward to working with you on this important legislation.

Mr. HARKIN. Thank you. I look forward to working with this subcommittee. Even though I am not a member of it at this time, I would like to work with the subcommittee as we go through it.

Mr. VOLKMER. I have no questions. I, too, wish to commend the gentleman from Iowa for his hard work in this regard and his knowledge. I know of his very great work in this field and I would just like to say that I know that the subcommittee will be working with him as we progress through the labyrinth of possible changes in the FIFRA law. I know there is quite a bit that needs to be done.

Mr. BROWN. Thank you.

Thank you very much, Mr. Harkin. We appreciate the work that you have put into this.

Let me just make a point here which I think other members have already tried to make. Obviously, this bill covers a number of important topics with regard to FIFRA which need to be considered, and I would just like to have you assert one more time that you will be willing to work with the subcommittee to see if we can find areas of agreement which could be acted on with reasonable dispatch and provide a basis for which we could perhaps report some sort of a vehicle to the full committee at a fairly early date. This may prove to be somewhat difficult, but it is worth an effort, I think, and it depends upon your cooperation and those who are working with you on this bill.

I would like to get you on the record with regard to that.

Mr. HARKIN. Mr. Chairman, I think I understand what you mean. That is, that obviously there are some provisions in this bill that are more, shall we say, concrete than others. There are some provisions that are much more difficult to appraise simply because we are dealing in an area which the basic sciences perhaps have not been fully developed.

Again, I would hope that perhaps we might take a look at this bill and find those measures in the bill that need to be adopted as soon as possible and which can be adopted as soon as possible, and if we can do that, and if that will help to get support for this bill, and to move it in a more expeditious manner, then I think this would be certainly the way we might want to go, perhaps leaving aside for further discussion or further development some of those other areas that aren't fully developed at this time.

I think there are some key parts of the bill that should be adopted as soon as possible, Mr. Chairman, and I would like to work with the subcommittee to try to develop those, and with all of the different sectors, both industry and agriculture and, of course, the public at large, and those groups that represent public citizen's groups and things like that.

Mr. BROWN. All right. I think that is an adequate basis to start from, Mr. Harkin. Again, let me thank you for being here this morning and we will continue to work with you on that.

Mr. HARKIN. Thank you, Mr. Chairman.

Mr. BROWN. Our next witness is Dr. Jack Early, who is president of the National Chemicals Association, a long-time friend of the subcommittee, and he is going to assure us of his close cooperation also in seeking to resolve this difficult problem.

STATEMENT OF JACK EARLY, PRESIDENT, NATIONAL AGRICULTURAL CHEMICALS ASSOCIATION, ACCOMPANIED BY SCOTT FERGUSON, GENERAL COUNSEL

Mr. EARLY. Thank you, Mr. Chairman.

As you indicated in your opening remarks, it is a pleasure to be before this friendly subcommittee this morning. It is always our pleasure to discuss one of the things that appears to have a lot of controversy around it, so we do appreciate the opportunity to be here this morning.

Mr. Chairman, I have with me this morning, Mr. Scott Ferguson, who is our general counsel of NACA, and I am sure he will make every effort to keep me out of trouble this morning.

Mr. BROWN. We welcome him here this morning and, of course, you need a lot of help in that regard.

Mr. EARLY. Thank you, Mr. Chairman. I appreciate our support.

Mr. Chairman, as I said, we appreciate the opportunity to testify on behalf of our association and we represent in our association about 100 agricultural pesticide producers and formulators and this membership of ours urges a responsible action on amendments to FIFRA, as you are undertaking in this subcommittee.

Mr. Chairman, you and members of your subcommittee are being asked to consider significant amendments to the law affecting the way pesticides are produced, registered, and sold in the United States and abroad. Our concern is whether this is the right time to consider the number and complexity of these issues. I think not.

We believe at some appropriate time in the future it may be worthwhile to consider some of the concepts and concerns embodied in the Harkin and Proxmire bills, along with those of industry, the EPA and others. Now is not the time. Administrator Ruckelshaus has been in office only a few months. It will probably be mid-fall before Dr. John Moore, the designatee for Assistant Administrator for Pesticides and Toxic Substances, can be confirmed by the U.S. Senate.

It is entirely possible that they will recommend that many of the problems identified in the Harkin and Proxmire bills can be successfully resolved by EPA administratively. In addition, major issues raised in the Harkin and Proxmire bills are currently before the U.S. Supreme Court and are not expected to be resolved until 1984. A very critical issue to our industry, I might add.

I do not intend to dwell in this testimony on the numerous parts of the proposed FIFRA Reform Act, H.R. 3818, that appear to us to be unwise. Discussion of that proposed legislation and suggestions from others on expansive changes to FIFRA is premature.

Finally, regarding the Heftel bill, I wish to repeat our view that no changes in the export provisions of FIFRA are necessary. Mr. Robert Oldford, current chairman of NACA and president of Union Carbide Agricultural Products Co., conveyed this position in testimony presented on NACA's behalf before this subcommittee earlier

this year. We believe that EPA has sufficient authority under current law to institute and enforce safeguards for foreign purchasers of U.S. pesticides.

In conclusion, we wish to stress our continued interest in supporting responsible legislation to amend FIFRA. We do not believe that the FIFRA Reform Act and the Pesticide Import and Export Act are the vehicles.

Mr. Chairman, we appreciate the opportunity to present our views. We would be pleased to respond to any questions. We thank you for the opportunity to be here.

Mr. BROWN. Thank you very much, Dr. Early.

Mr. Olin, do you have questions?

Mr. OLIN. I only have one comment, Dr. Early. I appreciate your point of view. With regard to the response of EPA to the situation, I think we are all aware that Mr. Ruckelshaus was in the EPA at the beginning, and was there for several years. He is a gentleman that, I am sure, takes that responsibility very seriously and is working hard to try to correct whatever ills he observes.

I would think that he probably is going to be in a position to come forward fairly promptly with changes in the administrative procedures and routines that relate to this subject and I would hope that our organization and others would encourage him to do that so that we can clear up some of the areas that existed with regard to EPA's intent and intended practices, and then include that in our understanding of the legislation appropriately. We don't offer legislation in the absence of good administrative practices, but the idea of doing nothing really I would find inappropriate in this situation.

Mr. EARLY. May I respond?

Mr. OLIN. Yes.

Mr. EARLY. I think you are absolutely right. The act of doing nothing is probably irresponsible, and I am not suggesting that we do nothing. I am saying that the timing is not necessarily right. I am personally very disappointed that EPA is not represented in this hearing or not apt to be on the witness list this morning or this afternoon. They are very vital players in this. I don't really see how we can legitimately deal with this law without the Administration being here to address those concerns.

Second, it is our very great hope that Mr. Ruckelshaus can bring some qualifications, some expertise, some good public perception into the regulatory agency. The thing that has been so damaging for my industry over the last number of years is some of the problems that have occurred in EPA. While you say that is an issue with EPA, it is an issue for my industry, because the public becomes suspect of my industry, that we are not properly and adequately regulated. I hope they will come forward with some changes to the law that we can support and work on with them, and we look forward to doing that.

Mr. OLIN. That is great. It seems to me that with something of that nature, which is highly technical and involved, with an appropriate administrative structure to make it work, that the only way we can reasonably proceed is pretty much in full concert with the agency. I am sure that this committee is going to be encouraging

that relationship, and if your organization can do the same thing, I think it would be helpful.

Mr. EARLY. I can assure you we will.

Mr. BROWN. Mr. Volkmer.

Mr. VOLKMER. I would just like to carry that idea of Mr. Olin's, Dr. Early, because I think as we look at the legislation, all of us who realize the impact of herbicides, pesticides, on the agriculture industry, would want to have some idea at least how the proposed amendments do impact on this industry, and it would be fair to members of the committee in making decisions, rather than trying to do something, think we know all the answers, but we really don't always, and I agree with Congressman Olin that we need to impact, at least the discussions with EPA, and I think it may be a little premature really on our part to say we really don't need to do anything at this time or shouldn't do anything.

Some of us feel that EPA really has not in the last few years handled the FIFRA law the way it should have. I think you agree on that?

Mr. EARLY. Oh yes, I do.

Mr. VOLKMER. So, therefore, some of us have a hesitancy about saying we will wait and let them do it administratively, because some of us fear that they won't, or they may do the wrong thing.

Mr. EARLY. I appreciate your comments, Mr. Volkmer. If I may point out a concern of mine—perhaps of yours too—is that while there have been situations that have been unfortunate from the administrative point within EPA, I certainly acknowledge those, I think those of us who certainly are regulated by the law, those of us who write such a law, must also be careful not to have overkill and not let the pendulum swing too far the other way. I am sure you are sensitive to that.

Mr. VOLKMER. Yes. You realize, too, that we not only have the agriculture sector, we have all the other sectors, and we don't want to do anything that is going to impact so that not even the farmers can use the water or the land in the future, or the food that is produced, and you don't want to do that either.

Mr. EARLY. Certainly not.

Mr. VOLKMER. So I think it behooves us all really to try to work together to come to an agreeable solution to be able to do the things that need to be done.

Mr. EARLY. I agree, yes sir.

Mr. VOLKMER. Thank you.

Mr. BROWN. Mr. Staggers.

Mr. STAGGERS. Thank you, Mr. Chairman.

Dr. Early, I have to echo the sentiments of my two colleagues who spoke before me, that I do think that we do need to look at that. You mentioned overkill. I think we are very much aware that we are dealing with the public health and that is something that we do need to stay on top of. I think Mr. Volkmer expressed it very adequately.

One thing that I would ask, my question would be on page 2 of your statement, you mentioned that you do not intend to dwell on what you feel is unwise about the Reform Act. Could you touch on that for me? I am not sure where you feel the act is unwise. The first full paragraph on page 2.

Mr. EARLY. Well, I think what I am alluding to, I don't think it is appropriate at this time to go through Mr. Harkin's bill item by item, section by section. First of all, we have had a chance to peruse some of those areas and obviously we have some initial reactions and opinions, but I don't think we are prepared at this time to go into great detail and analyze each one of them.

I think certainly we are most willing to cooperate, as I am sure you and the chairman would like for us to do, to see the areas where we might arrive at a compromise.

Mr. Roberts alluded to that also and we support that, and I think that we are prepared to do that. I am just saying let's have EPA find out what they are going to do; let's look closely at the issue before the Supreme Court, which is a great deal of concern to us. As a matter of fact, it does address an issue that is addressed also in the Harkin bill on disclosure of data.

So it is just the timing, not necessarily for change, we think there is a necessity for change, and I think we can cooperate and mold a sufficient FIFRA that is going to address the public health and public needs and our industry's need and the farmer's needs in the final analysis.

Mr. STAGGERS. I appreciate your outlook. If there is a possibility of compromise, are there any specifics in your review of it that we should be aware of that you find unacceptable?

Mr. EARLY. Well, nothing that comes to mind right now, Mr. Staggers, but we would be glad to supply you a list of those areas on how we generally react to some of these provisions.

Mr. STAGGERS. I would appreciate that.

Mr. EARLY. Yes, sir; we will do that.

Mr. BROWN. Dr. Early, let me just indicate in a general way what could happen to this legislation so the record will be clear and we can be forthright and above board on this. The subcommittee, as far as I am concerned, has no desire to act precipitously on this legislation except in the sense of maintaining a certain degree of tension with regard to continuing discussions on the subject matter. We feel that even if we moved expeditiously—and we do intend to have at least one more hearing in which EPA will be represented, in response to your comments about their not being here—even if we move expeditiously with that, shortly after the Columbus Day recess, and move to a subcommittee markup in a reasonably short time after the next hearing, it is highly unlikely that we could do much more than report a bill out of the subcommittee to the full committee, and there is probably no chance the full committee could take any action.

If everything moved well, however, and we had reasonable agreement, the subcommittee could proceed, as I have indicated, the full committee could have the bill under consideration, conceivably could move it out in the early part of next year, and with all sorts of luck, the House might pass it in late spring and it could get over to the Senate for a few weeks, and with any kind of luck it might get through by the end of the year. That is highly dubious since we have had a very simple, uncomplicated bill over there for a number of months and nothing has happened.

But I would like to pose to you the possibility that some strategy to get action with regard to amendments to FIFRA in this session

of Congress might be in your best interests. I point to the fact that you have a favorable audience here, I think I am being reasonably straightforward about that, a reasonable opportunity in the Senate, a reasonable administration, to protect your interests, and you have no assurances that will be true after the next election. It could be much worse. Now, on the other hand, it could be better, and you could be gambling on that and you might be right, who knows?

But in any event, in trying to move expeditiously to reach a sort of consensus on legislation that could be adopted in this session of Congress, I don't perceive that the subcommittee or I as chairman, are moving in a way that is adverse to your interests. I think on the contrary, we may be moving in a way that is congenial to your interests. But of course, reasonable people can disagree on that.

Mr. EARLY. I appreciate your comments, Mr. Chairman. May I respond?

Mr. BROWN. Certainly.

Mr. EARLY. The chairman and certainly the committee is fully aware of my desire and my industry's desire to cooperate and mold consensus in this area and certainly, Mr. Chairman, you are personally familiar with the extent to which we did that over the last couple of years, and I thought reported a favorable, reasonable bill to the floor of the House and one you took to the floor of the House, and I thought worked on very well.

So my industry is not here to stonewall and we don't want anyone to have that impression. We are here to say we are not sure the timing is quite right. We are willing to work out a compromise, a consensus. I am confident we can do that and I appreciate the chairman's analysis on where this bill may go, and I am not sure I would disagree with you, and I am not necessarily a big gambler. Mr. Chairman, I must recognize the realities of the world and I will deal with them appropriately.

Mr. BROWN. In the light of what I have said about the possible schedule in the future, I would personally appreciate it if you could give the subcommittee the benefit of some more detailed analysis of this legislation at an appropriate time, and I think it would be of considerable benefit to us.

I know it is a little pedantic to mention it but I am a great student of Plato. In the "Republic" there is a discussion of what constitutes justice, and one of the protagonists says "justice is the self-interest of the powerful." You are in the role of the powerful here in seeking your self-interest. But Socrates, after a long dialog, convinces the group the powerful don't always know what is in their self-interest so justice can't be defined that way.

That may be true in this case, I am not sure.

Mr. EARLY. Thank you, Mr. Chairman. I appreciate you sharing your philosophy with me.

Mr. BROWN. Right.

Mr. Roberts has returned, and I will ask him if he has any enlightened philosophical comments to contribute to this discussion.

Mr. ROBERTS. A further observation at this time. This poor former newspaperman observeth not, Mr. Chairman.

Mr. BROWN. Thank you very much.

Mr. EARLY. Thank you, Mr. Chairman.

Mr. BROWN. Our next witness this morning is Ms. Jackie Warren, representing the National Resources Defense Council.

Welcome, Ms. Warren.

She is likewise no stranger to the subcommittee. We have always appreciated the contribution that she makes in this area.

**STATEMENT OF JACQUELINE M. WARREN, NATURAL RESOURCES
DEFENSE COUNCIL**

Ms. WARREN. Thank you, Mr. Chairman.

I have a shorter testimony than usual, but I really wanted to say, as I said in the written statement, that this is the fourth time this year that a member of the NRDC legal or scientific staff is appearing before this subcommittee to express our concerns about shortcomings in both the statute and EPA's implementation of FIFRA and urging that changes be made.

The problem that we are concerned about are primarily four, although the bill addresses others as well. We have serious questions about the quality of the health and safety data that underlie existing pesticide registration and equally serious questions about both the quality and the integrity of EPA's reviews of those studies.

The glacial pace of reviews of existing registrations, especially in the RPAR program. In a hearing that was held by the Government Operations Committee on Monday of last week investigated the fact that it took 7 years for the EPA through its RPAR process to come to the point where they decided that they had to use the most drastic weapon in their regulatory arsenal against EDB, which is an immediate suspending some of the uses.

That most drastic weapon is used when they considered the danger so eminent they cannot afford to wait the length of any administrative hearing before they take action. It shouldn't take 7 years to do that. It has taken years of dietary contamination, and groundwater contamination and just unconscionable delays in the Agency's review process to come to that point. In our view, that is not a matter of the current administration or the past administration, it is a problem with the law and the way it is implemented and it needs to be addressed now.

The third problem of great concern to us has been the systematic exclusion of public input from key decision points in the process. We are currently litigating some of those problems, but again, this is something that should be addressed in the law.

The fourth is the existence of major loopholes to the section 3 registration requirements that are supposed to provide protection of health in the environment against the adverse effects of pesticides, to the extent that widespread registration can be obtained and in effect become permanent under other sections of the law, such as special local needs under section 24(c) emergency exemptions or experimental use permits. The whole basic purpose of FIFRA is thwarted.

We believe that H.R. 3818 presents a comprehensive package of amendments to address these projects in a timely and effective manner. A previous witness said that he would be willing to support responsible amendments. He suggested by implication that these are irresponsible amendments. We don't share that view, and

the fact that the previous witness was unable to speak with specificity to what it is exactly that is so irresponsible about these amendments, I think speaks for itself.

Also, I would like to speak to one other point, which is that the chairman just stated that this subcommittee has been and is congenial to the interests of the pesticide producers. In our view, and in the view of others, this committee has been too congenial to their interests. To the extent that the public health protection element of FIFRA, which is supposed to be at least equal to the farmers' concerns and economic interests of the pesticide producers and has really not been, and that it is time to elevate them, if not to a predominant position, to at least an equal place in the implementation of the statute.

We don't believe that H.R. 3818 is concerned with the imaginary problems, and the problems that it is addressing are structural and institutional. The personalities in EPA shouldn't matter in correcting problems in the law, and for that reason, we don't believe that further consideration should be delayed until Mr. Ruckelshaus takes hold, until Dr. Moore takes hold, because there is going to be an election at the end of the next year and the personalities may change again. In our view, this is something that needs to be done now.

The points that I want to focus on today are, first, the RPAR process and the fact that what it has done in an attempt to expedite review of unquestionably hazardous pesticides has been, in fact, to lengthen the period of time it takes EPA to review these compounds and arrive at a decision.

The IBT scandal and recent findings about potentially extensive cut and past review in EPA's data review only add to the urgency we feel about correcting these problems.

In addition to this is the increasing documentation of widespread pesticide contamination of ground water. I would note that in yesterday's Federal Register EPA published an advance notice of a proposed rulemaking out of their Office of Drinking Water, which is beginning the process of setting approximately 50—or considering 50 substances which have been found to contaminate ground water. Of these, more than a majority are pesticides and I have attached the list of the pesticides that are on that EPA list for your information at the end of my statement.

In the past, neither the pesticide program nor the Office of Drinking Water has really looked at potential ground water impact of pesticide use and as a result we have seen what is effectively nonrenewable resource, ground water. I say nonrenewable because the amount of time it takes ground water to self-clean is not in our lifetime, it is a measure in hundreds of years if not longer.

Furthermore, the marketplace simply can't protect the public against voluntary exposure to pesticides in their food and water and in their immediate environment. In the end, even if there were extensive opportunities for public involvement in the pesticide registration process and the regulatory process, which there are not, the public has to rely on the competence, the objectivity, the honesty of the EPA in reviewing the adequacy and validity of studies that are submitted to them. And these are studies that are produced by the pesticide manufacturers and which are submitted

with accompanying interpretations that present the results in the most favorable light for maintaining or obtaining a registration. And given this fact, it is absolutely critical that the Agency have in place mandatory, enforceable, good laboratory practices and a program of certification of laboratories that do pesticide testing, and a pesticide laboratory audit program that is adequately enough staffed to make sure that good laboratory practices are being followed.

We don't believe that implementation of FIFRA by the agency is suffering from a public relations problem. In our view, there is a crisis of public confidence in the Federal pesticide program. The RPAR process I believe had a good intention in the beginning, which was to expedite the process, and the process that they are trying to expedite is one that leads to lengthy adjudicatory proceedings to make the pesticide risk/benefit determinations and ultimate disposition of registration.

If the adjudicatory process is so onerous that it has to be avoided at all costs by carving out an administrative process which is really not envisioned in the statute and further delays the process, perhaps the statute should be changed to take away the adjudicatory character of the decisionmaking process. Have a hearing, but have it be much more expedited, not adjudicatory.

There is no reason to treat the pesticides as if they were citizens of the United States, with constitutional rights, entitled to have presented in their behalf hundreds of witnesses and delay these things, which have lasted from beginning to end an average of about 5 years through the judicial review process.

As a veteran of five of these proceedings, I can tell you that they are tremendously expensive, time consuming, and resource intensive, and it is not surprising that EPA sought to find a way around having to go through that process everytime they wanted to review and regulate a pesticide.

The representatives of the pesticide industry have told you, and you will hear later, I am sure, this isn't the time to amend FIFRA, that we don't need it, either it is working well or whatever reason, this isn't the right time. And all I can say is if the pesticide industry cannot or will not recognize the serious problems that they in fact have helped to create, which is apparent to other observers who have commented on the operation of this program, then their assessment of the current situation and the need for statutory changes is not deserving of great weight by the subcommittee.

The particular points in H.R. 3818 that we feel very strongly about, include first and foremost, reestablishing the burden of proving safety on the manufacturer, where it has traditionally been, where the courts have said it belongs, and where FIFRA supposedly intended it to be. In fact, it is not working out that way in practice.

The way H.R. 3818 would do this would be, first of all, to revise the regulatory standard of FIFRA to elevate the protection of human health to a highest priority position. It would establish priorities and time limits for data review and filling in data gaps on existing pesticides that are out in the food chain, in the water, in the home, environment, and which the public has a right to know are safe for those uses and those exposures are not going to harm us in the future.

To the extent that we don't have enough information to make this judgment, it seems to me that it is incumbent upon both the subcommittee and EPA to get those data generated and in on some kind of a timely schedule.

We also believe that the regulatory process, the key decisionmaking points would be opened again to full public participation, and this means broadening the standing requirements for participating in EPA pesticide hearings, providing an opportunity for public comment on all the regulatory and exemption proceedings, such as section 18 exemptions, and authorizing citizens to help themselves to enforce compliance with FIFRA, which is a right which is provided by all the other environmental statutes.

It is also absolutely urgent that the loopholes around section 3 be closed by establishing much stricter criteria for the issuance of experimental use permits, emergency exemptions, and special local needs registrations.

We also strongly support the need for EPA to develop and implement a national monitoring plan for pesticide so we can have some facts on exactly where and to what extent pesticide residues are contaminating the environment and people are being exposed to them.

We also would like to see enacted the provisions that would raise the standard of care for commercial pesticide applicators because the extent that the many reported incidents of misuse involving termite treatment of homes and other pesticide incidents are related to low standard of care by commercial pesticide applicators. That needs to be changed by enacting a stricter standard in the law.

We also would like to see establishment of mandatory cancellation or revocation of tolerance as the initial penalty for submission of false, misleading, or inaccurate information to EPA in support of a registration. The Agency now takes the position that if a pesticide is registered, even if the data supporting it were totally erroneous, fraudulent, false and misleading, they can't do anything about it because the standard they have to use in the cancellation process has to do with risk. They can't establish the risk.

It seems to me that if the pesticide wasn't entitled to that registration in the first place, the Agency should be able to remove it from the market immediately, and not have to stand with its hands tied because its own interpretation of FIFRA says it can't do anything else.

In conclusion, I would like to say again that pesticides are chemicals that are designed to poison and kill, that is what they are for. They are not just any old chemicals that have been introduced for some beneficial purpose that has no likelihood of having an adverse effect. Pesticides, by definition are likely to have adverse effects on nontarget species. It is urgent that they be required to be shown to be safe or they will be not used or not be permitted to stay on the market, and in our view, it is very urgent that Congress enact these changes in FIFRA that will expedite the review necessary to make that showing or else facilitate EPA in removing them from the market.

We have had quite enough ground water contamination, food chain exposure, and delay by those responsible for protecting the

health and environment from adverse effects of pesticide. All across the country State legislatures, other committees of Congress, concerned voices are asking why does this keep happening, what is going to be done about it, what is going to prevent it from happening in the future?

It is time for those who do have the responsibility and legislative jurisdiction over FIFRA and over the Office of Pesticide programs to remedy the mistakes that have brought us to where we are now, and prevent similar difficulties from arising in the future. We think enactment of H.R. 3818 would be a giant step toward that goal. We are counting on you to take that giant step. There is really too much at stake now for no response or half measures at this late date.

Thank you.

[The prepared statement of Ms. Warren appears at the conclusion of the hearing.]

Mr. STAGGERS. Ms. Warren, you mentioned that if H.R. 3818 was enacted that it would remedy many of the administrative and statutory deficiencies, and you outlined that in your written statement. Is there any other major differences between H.R. 3818 and what is in force now?

Ms. WARREN. We are supporting the whole bill. I didn't go through and pick out every provision that we especially are concerned about, but I can do that right now if you would like.

First of all, we want the inclusion of the identification of inert ingredients on the label. We would like to see them tested because inert in the context of FIFRA means pesticidally inert, it doesn't mean biologically inert, which is the reason that you could have vinyl chloride as a carrier in a pesticide as a spray or propellant and it didn't have any pesticidal properties, but it happened to be toxic. It isn't used that way anymore. That is what an inert ingredient is or can be, and for that reason, people are exposed to potential toxic inert ingredients as well.

I think this term inert is misleading, unless the person hearing it understands that we are talking about is pesticidally inert, and that is why we want them both labeled and tested.

We particularly support the enactment of priorities for the review of existing pesticide registration so that those which are creating food, feed, or water residues, or mutigenics will have a higher priority than those which are not.

We also support the fact that if the EPA doesn't do what they are directed to do in the law, that the registration will simply sunset. I think we have to light some fires under people who have been at this for so long—and the law has been changed a lot of times and the Agency has been sent marching this way and the other way. So many times they have had to renew and change what they are doing that that has had something to do with the slow process.

But I think the sense of mission and urgency that really should characterize the people responsible has been lost in EPA's Office of Pesticides programs and I believe that a strong message from Congress and some guidelines on how to simply do things, with a particular penalty on those ultimately responsible for doing it—which

would be the registrants—will light some fires in the right places and possibly get it done.

We are also supporting, as I said, the commercial applicator standards for raising the standard of care by having them report and keep records and narrow the criteria for the various chemicals to section 3.

As I said, I think the study on indoor air exposure, which we also strongly support, and employee protection. There is a history under other statutes of employees suffering intimidation and other problems because they reported a violation of a statute, and that has a place in this law and we believe it should be put in there. It is a very important one.

Also, expanding the expertise of the scientific advisory panel. To the extent that EPA is increasingly leaning on the scientific advisory panel, it is very important that that panel include the scope of expertise necessary to evaluate the matters presented to it.

And finally, the provision that would say that State enforcement programs have to be at least as stringent as the Federal program, is also very important because EPA has, through cooperative agreements, turned over enforcement of the pesticide program to the States and there isn't presently a standard, as there are in all the other environmental statutes, that the State program can be stricter but must be at least as stringent as the Federal law. It seems to us it would be appropriate to have that in FIFRA as well.

Mr. STAGGERS. I am sure you heard previous talk about the possibility of compromise and maybe changing the bill. I know you feel very strongly about the entire bill. Is there any part of that bill that you feel is absolutely essential that we need to do immediately or are we just looking at the whole bill?

Ms. WARREN. I think there is room for compromise but I also feel that things that affect everybody in this country directly, which are exposures to pesticides that haven't been shown to be safe because the data that support them are questionable, or because the reviews are questionable, is something that has the highest priority, and I don't think that ought to be watered down.

EPA has been directed to do that since 1972. This is 1983. They still haven't done it very well. They have done a few of them. In the last 2 years they have done some. We believe really it ought to be done again, because we are suspicious of the result because pesticides earmarked as potential hazards suddenly have, in our view, been effectively whitewashed.

Opening up the process is another one. We believe that a lot of the problems that we have seen here have to do with the fact proceedings have been closed and been closed in EPA's effort to get around having to face adjudicatory proceedings. They just arrive at a decision that the registrants can live with, and they won't ask for a long adjudicatory hearing. Interpret the rest of the world out of being able to ask for a hearing by saying they are not adversary affected by the decision and then you just don't have hearings and don't have to worry about staffing lengthy adjudicatory proceedings. That seems to me to be extremely important. The law should be changed to take that adjudicatory proceedings out of there if that is the big stumbling block, but discussion and decision of that

determination would be made openly and publicly, and they simply haven't been.

Although the public has an opportunity to comment, really decisions are not made in an open way, they are made between the registrant and EPA in a series of meetings that have been characterized as decision conferences, which are the subject of litigation by us and the AFL-CIO right now.

I would say the regulatory standard, the time deadlines for data review, opening up the process, are some of the major ones that really are urgent, and we are amenable to compromise. Nothing has happened on the law from your side for so long. Year after year they have said people come in here and say we want longer extension of exclusive use, we want to preempt, the States want to do more than EPA wants to do.

They have got a very good hearing from the subcommittee and they have gotten many of the changes, or at least they have gotten the committee to vote for the changes they want even if the full Congress didn't go along with it. And the concerns that we have been expressing all the way have been not entertained with the same congeniality that the chairman spoke about before. To a certain extent, we are impacted by this point because the problems that we have said are happening, or are going to happen, in fact are happening. We are worried about ground water contamination. We know it is not a figment of somebody's imagination, it has happened all over the country. People are upset about it.

The concern about the quality of the data reviews is another one. This subcommittee's own investigation shows serious irregularities in the way the program is running, real deficiencies in the laboratory auditing. It may turn out that those cut and paste reviews in fact were 100-percent instances where the data review—you have so completely agreed with the industry's data interpretation that they simply saved time by cutting out the conclusion and pasting it on the EPA review. But I have to believe that somebody who doesn't have time to read its own reviews, doesn't have time to do a very careful review.

It doesn't lend itself to public credibility to have it revealed consistently that this kind of thing is going on. That is why I said before that the public has to be able to rely on the credibility, objectivity, the competence of EPA in doing this, and this kind of a practice, whether the EPA is completely exonerated at the end of this or not, is something that shouldn't be happening. If they need the resources to do the reviews—again these are substances that are designed to be poisons and to kill, it is something that people not are unduly and unnecessarily worried about.

Mr. STAGGERS. Thank you.

Mr. BROWN. Mr. Franklin.

Mr. FRANKLIN. No questions.

Mr. BROWN. Mr. Volkmer.

Mr. VOLKMER. Yes, I would like to ask, have you examined H.R. 3818 fairly well in detail?

Ms. WARREN. Yes, I have.

Mr. VOLKMER. Can you tell me approximately what you would anticipate the need would be for additional appropriations to EPA to carry out the provisions of this act?

Ms. WARREN. I think what happened in the pesticide program has been over the past year, about a 29-percent cut in resources. I would think you would need to restore at least to the level they were at before.

The job of reviewing the existing pesticide is one that they have been given and the subcommittee and the full committee has repeated the mandate to them in 1977 and 1978, within the resources that were being given.

I am not sure that it is strictly a matter of resources. If they were restored to the level they have been at, I am not sure it is entirely a manpower problem, I don't believe they would need to have a tremendous increase in funding in order to carry this out.

I think there will be some additional resources needed. They certainly need to put more manpower into the laboratory's audit program and data reviews, but it seems to me that the number of people who are presently in the pesticide program and the restoration to the level they were at before they took that more than 25-percent cut, should be sufficient to get them started on this.

Mr. VOLKMER. What has concerned some of us in the past is that they don't really have sufficient personnel to do the job at the present time. It is not just a question of not wanting to do it.

I think they may not have sufficient personnel. I see some things in here that—I will be honest with you, I hadn't looked at the bill before this morning—I see some things where I anticipate that there would be additional manpower needed, at least.

Ms. WARREN. No, I agree, I think there will be. I don't think we need to do anything like doubling the size of the present manpower in the program. I think that they do need to be restored to where they were before, and possibly some additions, but I don't think this is not a doable job.

It seems to me it is a job we have to do regardless of what it takes because we are dealing with dangerous substances that are persuasive in the food chain, and people's homes and their water, and there is a responsibility there to protect the health of those people from untoward effect from those exposures.

Mr. VOLKMER. You have a list with your statement, attachment 1. Is it your view all of these should be suspect, and be eliminated from use?

Ms. WARREN. Not necessarily. These are substances which were registered which have been found in potable drinking water so that the Office of Drinking Water at EPA has singled them out as candidates for the setting of drinking water standards, because they know they are in people's drinking water now, and there hasn't been any look taken at what level of exposure to those pesticides may cause them harm as a result of having it in their drinking water.

Some of those are substances which have either been banned or severely restricted by various States and by the EPA. So, for certain, I don't want those in my drinking water, I am sure you don't want them in yours, either.

Somebody at EPA, whether the Office of Drinking Water or others, has got to look at the likelihood of pesticides getting into drinking water and what that means for people who drink it.

I include that in my testimony because I wanted to bring to the subcommittee's attention the fact that pesticide contamination of ground water is emerging as a big problem, and that it is beginning to be addressed by the EPA, but it is something that the pesticide program routinely has not considered in their evaluation of pesticides for registration.

It is a question of environmental faith. Where does it wind up? It is going to wind up in water. There ought to be an evaluation of what that means and some standard set forth, and if that shouldn't be allowed in the drinking water at all, then restrictions should be put on the use of pesticides to make sure it doesn't get there.

If there is no way to do it, it should not be allowed to be used in the types of soil where it is likely to wind up in ground water. These are questions that haven't been asked until recently.

It seems to me that it is appropriate for the registration process to ask those questions and it is appropriate for the Office of Pesticide Programs to work with the Office of Drinking Water to make sure that the public is protected against those in their drinking water.

Mr. VOLKMER. As I again review it, you have a provision on the list for the reregistration, by the Administrator's staff, shall not be subject to judicial review. Is that right, that is in the bill here?

Ms. WARREN. Right.

Mr. VOLKMER. OK, now, the thing is that we also have a provision in the bill for right of citizens, that would mean any organization basically, to file suit for violation of this act; is that correct?

Ms. WARREN. That is right.

Mr. VOLKMER. Even though there is no provision for review, therefore, do we have a possibility that an organization, a citizen, a company, anybody, could dispute that list based on the fact that they say that the tests that are used for bacterial tests were not actually performed properly, either way?

In other words, put something on the list or take something off the list?

Ms. WARREN. If the Agency is really setting priorities there, setting out a list of those to be restructured, but the review process is one which has ample opportunity, for the registrants affected to come and disagree with EPA, challenge what they have said and have judicial review, and that is the end of this matter of making the initial priority list not judicially reviewable simply to prevent tying up the review process by a lot of litigation over what is on the list in the very beginning.

Mr. VOLKMER. My point is, what I am trying to say, isn't it possible for anybody, either side, to file a suit to either have something put on or taken off the list?

Ms. WARREN. They can if the statute says it is not judicially reviewable, they are going to have a big burden to overcome when they go into the court, because it is Congress will, if enacted, that at the start of process not been judicially reviewable.

Mr. VOLKMER. That would be your intent?

Ms. WARREN. Just from the beginning of the process. The process of review itself is one which has, as I said, many opportunities for the registrant to come in and say their data are properly developed and valid, and if they disagree with the Agency's ultimate decision,

which is either reregister or cancel it, they have judicial review opportunities then.

The substances that would be dealt with on that list are subject to the RPAR criteria now, so the list in effect is made, we just really want to reorganize it so those with food, feed, or potable water residues would be given a higher priority than those who don't have that potential adverse effect.

Mr. VOLKMER. At the present time, do you, speaking for your organization, feel that EPA has been performing satisfactorily?

Ms. WARREN. No, I think everything I said suggests I think they haven't been performing satisfactorily.

Mr. VOLKMER. All right, and can you tell us, in your opinion, whether it was performing satisfactorily prior to 1981?

Ms. WARREN. No, I don't think it has performed satisfactorily since 1972. The statute was amended in 1972 to change the whole way the pesticides are registered and reviewed. The Agency in 1975 enacted their RPAR review criteria, and set about reviewing.

They were supposed to do it in 5 years. In 1976, there was a big exposé involving irregularities in the review process, checking off of data rather than really reviewing the data, just checking that they were there without looking at the validity of the studies.

Senator Kennedy did an investigation in the Senate Judiciary Committee and the Administrative Practices Subcommittee in 1976, and issues a record pointing to that.

In fact, the IBT scandal emerged that year, 1976. It has been a continuing problem. The General Accounting Office has issued a number of reports critical of the way the Agency's pesticide program was going and so, it certainly has really very little to do with the last 2 years.

The problem arose during the past 2 years, we felt exacerbated existing problems, but they didn't originate within the last 2 years for sure.

I don't think it is something that has to do with permits, it is an institutional problem, and it is their problems in the law and the way it is written and what EPA either is required to do or believes it is required to do under that statute, that we think need to be changed.

Mr. VOLKMER. Thank you, Mr. Chairman.

Mr. OLIN. Ms. Warren, you made a statement, I guess, along the way, maybe at the beginning of your comments, that maybe this committee was going to be unduly friendly to the manufacturers of pesticide.

Ms. WARREN. I hope that won't be true.

Mr. OLIN. I can't speak for the other members of the committee, but for myself that fear is totally unfounded. In my view, I think what we are certainly going to be trying to do is come up with some kind of balanced approach to the problem that doesn't unduly lean in anybody's direction, if we can possibly achieve that.

I wonder if I could ask you a couple of other questions. You have given a pretty blanket endorsement to the bill as written, I guess a total blanket. Is there any portion of the bill that you have questions about or would want to modify?

Ms. WARREN. One of the points that is not in the bill which is addressed in my testimony, goes to the adjudicatory nature of the

cancellation hearing process. Many of the environmental statutes involved hearings, but with the exception of enforcement proceedings, they are not adjudicatory proceedings, and the enforcement proceedings ordinarily are for civil and criminal penalties, for violation of the statute.

It is not the same kind of a hearing as the review for registration, potential imposition of restrictions on use, or cancellation or suspension, and it has been very time-consuming, and for the Agency to go through five or six of them, have taken years, very expensive.

I myself went through in the beginning of the 2-4-5, the hearing, and it is extremely burdensome to go through that. The nature of the evidentiary proof that the various parties have to put forth isn't appropriate when we are dealing with 35,000 registrants, 600 active ingredients that need to be reviewed, where there are serious questions about the safety of a large number of those.

So, if I were going to suggest a modification to the bill or it is not in the bill, that would be one of them, if that is the reason that we backed ourselves into this jury-rigged RPAR process which has caused a lot of concern, because the decision points are not open, I would rather have a return to the hearing process, but have it not be adjudicatory and much more expedited than it has been.

Mr. OLIN. As you have read the bill in detail, the bill is full of very specific requirements, very specific dates by which various activities are supposed to have taken place with rather detailed requirements on EPA, which you favor, and perhaps for good reasons.

Have you gone through this from the point of view of practicality, of actually achieving these objectives? Have you really tried to think through from your experience whether it is likely we are going to be able to carry out the provisions in here or will we be just deeper in the soup of a couple of years by having regulations which we are missing and not following much more than we have in the past.

Ms. WARREN. I have thought about that. I have to say that I have gone completely around from the point of view I used to have about imposing deadlines on EPA to do a large job in what appears from the point of view of the regulator to be a very small amount of time, but the law starts with the 5-year review existing registration requirement.

That is what was imposed in 1972 and the Agency just couldn't do it. By 1976, the Kennedy subcommittee report showed that it was a fiasco.

So they were given more time. They still couldn't do it. Now, they are on with all deliberate speed a schedule which is one which has absolutely no pressure to get there at any time.

So I have come around to the point I think we do need to give them a deadline. Maybe these aren't the right numbers.

Mr. OLIN. One of the questions I would like to have—

Ms. WARREN. I think they need to have some deadlines to meet. Force these people to go to the Office of Management and Budget and say, we have to have the funds for this, we have to have people, because we have a statutory deadline to meet.

Mr. OLIN. It didn't help them in the last couple of years.

Ms. WARREN. They have been under this program. They aren't under this kind of deadline.

Mr. OLIN. I guess the point I am making is we have had 9 or 10 years' experience with this law, 11 years, we are not satisfied, I don't think anybody is satisfied with the way it has worked out, and with really the best efforts being carried out over a lot of that period of time, to achieve the goals.

So we are dealing with a subject that is showing all evidence of being quite complex, difficult to achieve, hard to exercise judgment, not black or white, a thing that is difficult to handle, and in trying to revise this law, it seems to me that we ought to be careful not to just put in a lot of stuff that is window dressing and reflects a laudable objective, but that we ought to be pretty careful to try to get it down to practicality, set some goals that are quite likely to be achievable so we can start to again make tangible progress, resulting where the morale of with regard to the subject can be improved recognizing that past experience indicates very clearly we are not going to get perfection, we don't get there ever, we won't get close to it in a reasonable length of time.

We are far better off to have something that can be supported by the Agency, can be supported by the administrative branch of Government, can be supported by the Government, by the people, we will be better off in the long run to have such an approach rather than an omnibus approach that goes too far.

Ms. WARREN. I would agree with that, but I don't feel that a lot of what is in this bill is window dressing. A lot of the proceedings in the bill are addressed to problems that were underscored in the subcommittee's report of last December.

The fact that so many pesticides are being registered for special local needs, 30 States have special local needs registration, but there is no section 3 registration and they have effectively got a national registration without going through the requirements of section 3.

That seems to be a very real problem that should be addressed. The fact that so many pesticides are supported by IBT data or data from other laboratories coming out, perhaps that is questionable.

Some labs have contracts with the Government that do research for the National Cancer Institute as well as for private clients have been doing incompetent work. That is a problem that a good laboratory audit program, I believe, would be able to put an end to, and I think this is a real problem that needs to be addressed right now, the fact that there has been very little public involvement in the key decisions points under RPAR, we view as a serious problem, and the fact that the States are effectively being given complete enforcement responsibilities for pesticides without having to meet the stringent standard of what EPA would have done, we consider to be a real problem.

So I think some of these, if I had to say which would you give up, I think that the pesticide monitoring program is very important. If I have to choose between a deadline to get those questionable health and safety studies done, I will take the review of the health and safety studies first.

That is what you are asking me. Obviously there are some things that would be nice. If we have to pick and choose, they are not

going to make it, but I don't consider the particular points that I underscoring in my testimony to be in the category of window dressing.

The point I made about commercial applicators—I work in the New York office of NRDC. Up on Long Island there have been serious problems about termite control applicators either improperly treating homes with chlordane and aldrin or treating homes that shouldn't be treated with those substances because of the type of construction.

A man's house was completely leveled because it can't be decontaminated. The General Accounting Office estimated there could be a million homes a year treated with chlordane.

There are about 40 million homes in the United States of a kind that where the type of construction might suggest that in 25 percent of those they shouldn't have chlordane, yet that is the treatment of choice for termite control.

To the extent that it is a misuse problem, it is very important that we get a handle on that. So that is a problem which maybe doesn't sound like it is of the same order as some of the others, but if it is your home, it is 100 percent of your home, it is a serious problem.

Mr. OLIN. Thank you very much.

Mr. BROWN. Thank you very much, Ms. Warren, for your testimony.

Next is Dr. Ralph Engel, president of Chemical Specialties Manufacturers Association.

Dr. Engel, we are pleased to have you here this morning, and I see you have a distinguished colleague with you.

STATEMENT OF RALPH ENGEL, PRESIDENT, CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION, ACCOMPANIED BY WARREN STICKEL, DIRECTOR, LEGISLATIVE AFFAIRS

Mr. ENGEL. Thank you, Mr. Chairman, and good morning. I want to thank you again for the opportunity of appearing before this subcommittee, and as you say, I am accompanied today by Dr. Warren Stickel, who is our director of legislative affairs for CSMA, and who most of you already know.

CSMA has a membership of nearly 400 firms engaged in the manufacture, formulation, distribution, and sale of insecticides, disinfectants and sanitizers, detergents and cleaning compounds, automotive chemicals, and waxes, polishes and floor finishes for household, institutional, and industrial use.

We are here today to review a few of the areas raised in H.R. 3818 and to address as well some of the concerns we have with the existing statute. Before we do so, we would like to call to your subcommittee's attention something that has already been called to our attention, the recent letter sent by 33 organizations to all Members of the House Agriculture Committee opposing H.R. 3818.

This joint letter points out that these organizations oppose the proposed legislation, and I quote,

* * * because the bill contains numerous amendments to the underlying FIFRA statute which would change the basic thrust of the act and limit EPA's ability to make fair and reasonable decisions, and effectively curtail research, development and marketing of pesticides

—all without adequate justification.

In addition, the letter observed that:

The passage of these amendments to FIFRA at this time is most certainly premature and unnecessary. The new Administrator and the new Assistant Administrator for Pesticides and Toxic Substances should be permitted sufficient time to review the Agency's priorities, and to review specifically FIFRA and the pesticide programs before any changes in the statute are proposed.

The signator associations suggested that:

The Department of Operations, Research, and Foreign Agriculture Subcommittee should wait until the Supreme Court has had an opportunity to review the constitutionality of key sections of the act in *Monsanto v. EPA* (E.D. Missouri, May 9, 1983) before considering a comprehensive revision of the basic FIFRA statute.

In addition to this joint letter, the Association of American Pesticide Control officials recently sent a separate letter to the House Agriculture Committee opposing H.R. 3818. Further, at its recent convention in Jackson, Miss., the National Association of State Departments of Agriculture adopted a resolution opposing H.R. 3818.

"This legislation," noted the NASDA resolution,

* * * would seriously restrict the ability of States and EPA to appropriately consider both the benefits and risks in using pesticides, while protecting the public health and environment and to respond in a timely manner to the needs of pesticide users and to the legitimate requirements of the pesticide industry.

In addition, it pointed out that—

* * * serious problems would result in many FIFRA programs, including applicator certification, special local need registrations, emergency exemptions, and the section 3 registration programs.

We commend both this letter and this resolution to your attention.

Mr. BROWN. Without objection, they will be made part of the record.

Mr. ENGEL. Thank you, Mr. Chairman.

We would like to take a few moments to briefly discuss a few of the CSMA's concerns about H.R. 3818 that reflect the views of our membership.

If H.R. 3818, the FIFRA Reform Act of 1983, were enacted, the Environmental Protection Agency's ability to regulate pesticides in a cost-effective manner would be jeopardized. The bill sets aside the balance that Congress created when it passed the original act, and would further restrict the manner in which the EPA makes its decisions.

This legislation would permit groups or individuals to intercede or challenge those decisions during the regulatory process prior to any Agency action, and would permit disclosure of valuable information prior to the issuance of a registration. Furthermore, H.R. 3818 would permit these groups and others to take the enforcement of FIFRA into their own hands by permitting them to sue the EPA or anyone else thought to be in violation of the act.

The FIFRA Reform Act proposes to expand the EPA's authority under section 25(c) to include establishing and enforcing standards for indoor human exposure to pesticides. The meaning of the amendment is unclear. The EPA already regulates exposure to pesticides or misuse of pesticides. No further authority over indoor exposure is needed. Moreover, the grant of the EPA authority overex-

posure in manufacturing operations and work places that conflicts with existing OSHA authority is unnecessary.

Currently, FIFRA section 24(b) prohibits States from imposing labeling or packaging requirements in addition to or different from those required under FIFRA. The FIFRA Reform Act would establish an exception to this prohibition and permit States to require labeling to identify uses of the product that are prohibited within the State.

The burden imposed in interstate commerce and upon manufacturers by such a provision is unreasonable. Additionally, the enforcement of this provision would be extremely difficult. Pesticides frequently change hands between various manufacturers, distributors, and consumers, and may end up not being applied in the same State in which they are sold. Accordingly, these pesticides may be labeled to be in accord with the law of one State, but may end up being applied in another.

The expense of complying with potentially different labeling requirements, therefore, would not be justified. Congress, by virtue of the present prohibition on state labeling requirements for federally registered products has already considered this issue and has decided to explicitly prohibit its enactment. The current section 24(b) FIFRA prohibition should therefore be left intact.

Although we have serious problems with many of the provisions on H.R. 3818, we welcome an opportunity to work with members of the subcommittee regarding this proposed legislation in the hope that we can resolve some of our difficulties.

We are equally concerned, however, that H.R. 3818 does not address many other pressing problems about FIFRA, just a couple. All the others are included or some of the others are included in our written statement as well.

We would like to focus on only one segment of section 24(a) dealing with whether or not political subdivisions of a State, such as a county or township, should be able to exercise the same pesticide jurisdiction as a State.

During the 1980's there have been attempts by various political subdivisions of States, such as cities and townships, to get involved in the process of regulating the sale or use of pesticides or requesting generation of data.

Before this problem spreads to other States and their political subdivisions, the statute should be clarified to say that "a State, but not political subdivision thereof, may regulate sale or use of pesticides or require generation of data." While there is legislative history clearly indicating a Congressional intent in this regard, the statute contains no express prohibition.

We believe that the statute ought to reflect the congressional intent that political subdivisions below the State level should not regulate the sale or use of pesticides.

Senator Paul Sarbanes has introduced S. 780, a bill to require that the EPA maintain a facility for the biological testing of pesticides under FIFRA. We support language similar to this bill.

We believe it is appropriate to have one Federal laboratory facility that has the authority to provide testing of disinfectant materials and thus avoid conflicts over testing methods and test results.

Without such a laboratory, we foresee the possibility of numerous States obtaining varying test results on the same product and thereby taking different enforcement actions. Even with only 3 States currently conducting the tests; namely, Florida, North Carolina, and Virginia, there is early evidence of differing test results between them, instances where 1 State would fail a product against a test organism while another State would obtain passing results.

Multiply that example by hundreds of products and you can see the confusion that would result.

Up front, H.R. 3818 does not address itself to these and other important issues. We hope, however, that the subcommittee will address these concerns at the appropriate time. We welcome the opportunity to offer our testimony, and applaud the subcommittee's long-standing concern and hard work on FIFRA.

We fully realize that there are a number of complex FIFRA issues that need to be discussed and that this process will be time-consuming. Certainly we would like to assist in any way we can discuss these important concerns and help to resolve some of them.

Within a short time, we will know if the U.S. Supreme Court will take up the *Monsanto* case. If the Supreme Court considers this case, it will be months before a decision is rendered, perhaps by spring of 1984.

Since this decision would be likely to have a significant impact on FIFRA, when I say likely, I am talking about possibly a very broad impact on FIFRA. As an example, H.R. 3818 has something like 18 subsections of section 3, rewritten section 3, of FIFRA under scrutiny by the Supreme Court.

Since its decision would be likely to have a significant impact on FIFRA, it seems premature to deal with these measures until the Supreme Court has determined its course of action. We may all sit here for months and rewrite FIFRA and then have to turn around and rewrite FIFRA.

Additionally, due to the significance of H.R. 3818, and its impact on the statute, as well as other concerns raised by other witnesses today, particularly, we specifically urge the subcommittee consider holding hearings on this matter later on when all parties to this act could focus on the issues with the Supreme Court's activity behind us.

We would of course welcome an opportunity to participate in Federal deliberations on this matter at the appropriate time, and hope indeed to compromise and fulfill our desire to have a bill.

We are committed to working with the subcommittee indeed to resolve these important concerns.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Engel appear at the conclusion of the hearing.]

Mr. BROWN. Thank you very much, Dr. Engel.

I note that your statement contains great details of further analysis of points that you have with regard to this legislation, and I want to commend you for that. It is very helpful to the subcommittee in considering legislation.

Dr. Stickel, did you have anything you wanted to add to this.

Mr. STICKEL. No, thank you.

Mr. BROWN. Mr. Roberts, do you have any questions?

Mr. ROBERTS. No, sir.

Mr. BROWN. Mr. Penny.

Mr. PENNY. No, sir.

Mr. BROWN. Mr. Gunderson.

Mr. GUNDERSON. No.

Mr. BROWN. Mr. Volkmer.

Mr. VOLKMER. Yes, I would like to ask a question, the same one that I asked the previous witness.

You have reviewed the legislation, apparently very thoroughly from reviewing your statement. Do you anticipate that there would be a need for additional appropriations in the event it was passed the way it is into law, personnel, laboratories, et cetera, as a result of legislation.

Mr. ENGEL. Well, your next question I presume is going to be how much do you think it would cost and I can't respond to that.

Mr. VOLKMER. That is not my next question.

Mr. ENGEL. I would anticipate there would have to be a significant amount of personnel placed into the agency to accomplish some of this. I don't know how much or how many dollars.

I think EPA should be the one who reviews this and addresses that particular point and I think they will.

Mr. VOLKMER. Let me ask you another one in regard to that.

In the event this became law and there would not be additional appropriations, they had to do it the way it provided in the law, like in the bill, and they are not given additional personnel, et cetera, it is assumed that on the additional data required that the industry was able to provide it, would the EPA be able to review it within the timetables in the bill, even on registration, with the amount, with the personnel we presently have?

Mr. ENGEL. Well, let me just touch for example on one point in that bill dealing with the definition of data gaps.

The bill proposes an amendment to FIFRA, section 3(g), that could result in the elimination of many pesticides from the market, not for health and safety reasons but for the failure to satisfy re-registration timetables.

Under this amendment, the EPA would have 4 months to examine test protocols, test results, and agency conclusions with respect to every test submitted to the Agency to support every product now registered with the EPA prior to 1978, and to identify data gaps, that is, data requirements for which there are insufficient current scientifically valid data.

This review would include over 11.5 million efficacy studies alone.

Registrants would then have only 3 years after formal notice to fill these gaps. The penalty for the failure of either EPA or the registrants to satisfy these timetables is automatically EPA notice of intent to suspend pesticides.

This timetable is obviously unreasonable and truly unworkable. Existing data gaps should be accepted as quickly as possible, based on priorities lists of chemicals, and the administration ought to be given the flexibility to resolve these problems within the regulatory framework.

If we do that, I suspect we need an army to get that done within that timetable.

Mr. VOLKMER. In other words, if we pass the law but do not provide the appropriations, it is going to be, with all the data it would generate, a matter of default that registrations would be rescinded?

Mr. ENGEL. I think so, yes.

Mr. VOLKMER. Thank you, Mr. Chairman.

Mr. BROWN. Mr. Evans.

Mr. EVANS. No questions.

Mr. ENGEL. One comment.

I summarized my statement.

Mr. BROWN. Without objection, I did note that you just touched the high points and I commended you for that, and without objection the full text will be in the record along with the supporting documents.

Mr. ENGEL. Thank you very much.

Mr. BROWN. Thank you.

Our next witness will be Mr. John Wise, representing the Pesticide Producers Association, Kansas City, Mo.

We appreciate your being here and you may proceed with your testimony.

STATEMENT OF JOHN M. WISE, CHAIRMAN, LEGISLATIVE COMMITTEE, PESTICIDE PRODUCERS ASSOCIATION

Mr. WISE. One correction I would like to make, Mr. Chairman. The Pesticide Producers Association is not located in Kansas City. Our offices are here in Washington. I happen to be from Kansas City.

Mr. BROWN. You are from Kansas City?

Mr. WISE. Yes, sir.

Mr. BROWN. Let the record reflect Mr. Wise is from Kansas City but PPA is here in Washington.

Mr. WISE. I am John Wise, chairman of the Legislative Committee for PPA, the Pesticide Producers Association. I would like to thank you for this opportunity to testify today before the subcommittee.

The Pesticide Producers Association is an industry trade association made up primarily of small manufacturers, formulators and importers of crop protection chemicals. Our association works to insure that the small business interests of the pesticide industry are protected and that the competitive nature of our industry is preserved in order to provide an adequate supply of crop protection chemicals, at a competitive price, to the American farmer and rancher.

We are concerned that the subcommittee has undertaken hearings at this time to consider possible amendments to the Federal Insecticide, Fungicide, and Rodenticide Act, in view of several recent events which have had an impact on both the interpretation and implementation of the law.

First, the U.S. District Court for the Eastern District of Missouri has handed down a decision which has declared portions of sections 3 and 10 of the act to be unconstitutional.

Second, the administration of the Environmental Protection Agency is in the process of undergoing changes which include almost a complete replacement of the administrative staff associat-

ed with the implementation and enforcement of the act. The new administration has not had sufficient time to begin implementing new policies which could have a significant impact on pesticides. In addition, the appointee for Assistant Administrator of Pesticides and Toxic Substances has not been confirmed by the Senate at this time.

Third, it is also our understanding that the Agency is reviewing the need to introduce an administration bill. Such a decision by the Agency cannot be made until such time as the new administration staff is in place and has had time to review the problems which must be addressed.

In view of these events and problems, it would seem prudent for the subcommittee to delay the consideration of amendments to the act until such time as we are all more aware of their outcome. It is possible that the new administration can address many of the problems addressed in the Harkin bill administratively. The new administration should be given a chance to correct any problems which may be present before saddling them with new changes in the law before they can properly implement the current law.

Mr. Chairman, I would like to state for the record that the Pesticide Producers Association recognizes that the current law must have amendments passed to it which will correct problems associated with fair competition and the protection of man and his environment. During the last Congress we worked with this subcommittee, other trade associations, the EPA, and public interest groups in an effort to seek reasonable solutions to the problems which surround this law, and will in the future continue to do so.

However, we do not believe that this is the proper time to consider amending a law which will only have to be reconsidered by this subcommittee once the Supreme Court rules on the constitutionality issues before it, and the new EPA administration has had time to review its needs and is able to provide this subcommittee with its recommendations.

If this subcommittee should choose to press forward in considering amendments to FIFRA, we would like to suggest that they consider the secondary repercussions and ramifications on other agencies and departments of the Government as well as the international and foreign trade concerns. The Pesticide Producers Association will continue to work with this subcommittee, as we have in the past, to help it seek reasonable solutions to the problems associated with FIFRA. Since the enactment of this act in 1972, we have been faced with reconsidering and amending it on an average of every 3 years.

The results have been a law that has placed the EPA in the position of trying to implement a constantly moving target, with never a chance to put into effect the rules and regulations necessary to make it fully effective. We have succeeded in creating a law which is beginning to resemble an accident victim covered in bandages. Is it not time that we find a cure for this victim instead of handing it another box of band-aids?

Now is an excellent time for this subcommittee to study the errors of our past experiences and to perhaps begin anew in seeking a proper solution to the needs of man and his environment for the reasonable use of crop protection chemicals.

We in the industry have been the products of our own future shock syndrome. In the 1960's we found that we could analyze products at the parts per billion level. In the 1970's we developed methods to analyze these same products in the parts per trillion levels. As a result of this advanced technology, we are now in the position of reevaluating all of the work we have done in the past to determine if it meets today's standards. In essence, we are constantly reinventing the wheel.

This problem does not limit itself to chemical analysis, but also to the entire field of evaluating the safety of a chemical. We are faced with trying to apply today's technology to the work we have done over the past 35 to 40 years, a task which cannot be accomplished overnight. At the same time, we are looking for newer, more effective and safer crop protection chemicals which will continue to allow us to be the leader in world agriculture production.

Mr. Chairman, members of the chemical industry are perhaps some of the strongest supporters of a clean and healthy environment. We live in the same world as everyone else, we breathe the same air and drink the same water. We are concerned that our children and our children's children have a world to live in which is safe. Perhaps, at this point, the chemical industry differs in their beliefs from other groups.

Today we have one of the most productive societies in history. Our people are healthier and have a better standard of living than many other countries of the world. We have plenty of food to eat and are able to supply food to other countries of the world. Much of this success has been made possible through modern chemistry and the proper use of these chemicals.

Mr. Chairman, this concludes our remarks. I shall be pleased to respond to any question from members of the subcommittee.

Thank you.

Mr. BROWN. Thank you very much, Mr. Wise, for a very positive and constructive statement.

We do acknowledge the cooperation that you have given to the subcommittee in the past and we recognize that you share our frustrations at not having been able to achieve better results. The problem that confronts us is that despite the best work of this subcommittee and the Agriculture Committee, we are at this moment without authorization for FIFRA, it operates on the basis of the continuing regulation, and in the meantime we are confronted with efforts to modify FIFRA and direct the work of EPA from a number of other sources, including Members who rise on the floor and attach amendments to the appropriation bill that tell EPA what to do with FIFRA.

In the absence of an adequate legislative framework from this committee, or other committees, I am not sure that we are going to be able to solve the problem. I sometimes feel that it is not worthwhile to proceed in spending a lot of time and effort on this task, but I am driven by a sense that we are obligated to make reasonable efforts to maintain this structure in the interest of what the agricultural communities, the chemical industry, the consumers, and the general public.

I keep telling myself that these are important reasons to go ahead with this and I am not at all sure that I have convinced myself yet but we are still doing it.

Mr. Roberts.

Mr. ROBERTS. I have no questions, Mr. Chairman.

Mr. BROWN. Mr. Penny.

Mr. PENNY. Mr. Chairman, just one question.

On page 2 of your testimony, Mr. Wise—let me read from the testimony, "I would like to state for the record that the Pesticide Producers Association recognizes that current law must have amendments." Would you also like to state for the record a few examples of amendments that you feel are necessary?

Mr. WISE. The areas that we have looked at are a lot contained in the work done in the last Congress. We were looking at areas which resulted in fair competition, that we felt would need to be done primarily associated around section 3 of the law.

Also, we feel that there are some areas that do definitely need to be addressed to more or less perhaps hold the Agency's feet to the fire in some instances to do health and safety work of a different standard than have been done in the past.

We don't feel timetables necessarily are the way to approach this—from a mere stand that we have seen in the past—that when you take and force somebody to do something in a short period of time, they will find every short-cut they can to accomplish that goal. We don't believe that it is proper to say you have to review all of the safety data you have in the next 5 years because, when you start doing this, you are going to get cutting and pasting instead of thorough evaluation.

There is so much manpower available. We believe there are areas like this that can be addressed—perhaps ground water areas and other areas that need to be addressed within the law.

We do have, and have prepared information we can supply the subcommittee on these areas.

Mr. PENNY. Thank you, Mr. Chairman. I don't have any further questions.

Mr. BROWN. Mr. Gunderson.

Mr. GUNDERSON. Thank you, Mr. Chairman.

I guess just to follow up on what my colleague from Minnesota was saying, is the problem all of us in the subcommittee have is, where do we go from here? We have been through this.

The chairman has indicated the problems in reauthorization that we are having in the subcommittee and I fear that all we have done in these hearings has probably ended up with a polarization of the two sides.

Do you have any suggestions how we can bring everybody together and get a bill that has any reasonable chance of passage, not just in the House but in the Senate as well.

Mr. WISE. I think the question has to be defined as to exactly what you want to put into a bill. What are you going to address and what areas?

If you can consider and realize that a bill is passed, and if the Supreme Court holds up, holds the decision of the eastern district of Missouri, that sections 3 and 10 are unconstitutional, you may have created a law now or amendments to a law which nothing can

be done with because other areas of the law are now being declared unconstitutional.

At the same time, some of the health and safety issues have been addressed in the Harkin bill, directly upon release of the data under section 10.

Right now the question before the Supreme Court is, can it be released?

Mr. GUNDERSON. You are suggesting then we wait until the Supreme Court ruling?

Mr. WISE. I think that is the most prudent thing to do. But if this committee decided to go forward with this, I think that the different sides on this are going to have to sit down together and get around the table and bang it out and say, what is the bottom line, where do we start, where do we work, and what can we do?

There have been attempts to do this before, but it has never been totally successful.

Mr. GUNDERSON. That is my concern. I am aware of some past attempts, I am sure there is reasonable or more optimism in October 1983 than there has been at any previous time and I am afraid that we have a pretty serious problem developing in the whole area of pesticides between the lack of authorized legislation and some of the other problems that we all know are occurring at EPA in this area, and that I am not sure we have a very good environment out there in which to deal with this issue. I am not sure how to resolve that.

I guess that is more a statement than a question.

Mr. WISE. One of the things I think that we are missing the point of here is that if we are considering the health and safety aspects of pesticides, the Agency has tools in its hand right now to do it, many areas of the law already. If they will take and enforce them, they have the ability to request the data.

Much of the things that are starting to come up, such as the ground water problem only developed in the last few years so we have been able to identify and analyze these compounds we have not been able to see before.

The Agency now knows it is present, the Agency is currently working on computer modeling programs and protocols to start defining how does this material move. When can we expect a given type of molecule to move into the ground water? Industry is working the same way. It is a matter of allowing the Agency the time to start doing something with them.

Mr. GUNDERSON. That is a statement that you aren't the first one that has made it this morning, that the Agency has the tools to do it if they want to.

Does that mean that you think you and others in the industry suggest they ought to go ahead and do it?

Mr. WISE. The Agency has the ability to do it, they have a law in place. If you are talking about health and safety aspects, the problem is, and the reason for the outcry that we are hearing here today is that the public has no confidence in the Agency. That is why they want to get their hands on data, that is why they want to take a look at what the Agency is doing, they want more restrictions on the Agency.

If the Agency is properly doing its job, the public has no outcry against it. But this is the problem, my people have to have something in the law to protect ground water. We might have to make the Agency look at them—why do we have to make them look at them when they have the ability to protect under the current law if they properly enforce that law and interpret that law and use that law.

I am here testifying for the Pesticide Production Association. I am also a member of the National Agricultural Chemical Association and serve on the regulatory committee with this group. That committee has worked very closely with the Agency in trying to develop a lot of rules and regulations in force. That committee has worked with the Agency to try to put into place the various aspects that need to be handled in order to take and do a proper job of enforcing the health and safety of pesticides.

We are concerned because every time pesticides come up on the market and hit the newspapers, or "20-20," or "Sixty Minutes," you name it, it is not the general public out there that is getting the black eye, it is our industry. We have to have products out there that are safe and effective. We don't want products out there that are not safe and not effective because it reflects against us directly.

We are learning more today than we knew 10 years ago and we have to move toward what we have earned and put it into effect, but we can't back up and do it over what happened 25 or 30 years ago, we have to do it today on a timely basis to start putting these things into effect.

Mr. GUNDERSON. Well, I certainly share those comments and have never been one who has felt that industry is guilty as charged in any sense of the word in this area or any other areas. I guess my only hope is that is the right point in time, we might be able to find either a substitute version or another piece of legislation or something which we can use as a mechanism to bring everybody together.

I don't know if that is possible. Based on some of the testimony we have heard today, I am not sure it is. I think you talk about the problems your industry faces and the idea they are automatically charged. Part of this results from the fact that I think all of us in the environmental communities, not industry, and those of us in Government, we are all at fault there because until we can somehow show that the system can work and we can sit down and bring reasonable minds together on this and enact some kind of legislation that is the only time the public is going to get that confidence.

I appreciate your comments.

Thank you, Mr. Chairman.

Mr. BROWN. Mr. Evans.

Mr. EVANS of Iowa. No questions.

Mr. BROWN. Thank you very much for your consideration this morning.

Our next witness will be Maureen Hinkle, representing the National Audubon Society. Without objection the full text of Ms. Hinkle's statement will be placed in the record and you may summarize or abbreviate it in any way you wish.

**STATEMENT OF MAUREEN K. HINKLE, NATIONAL AUDUBON
SOCIETY**

Ms. HINKLE. Thank you. I don't want to try your patience at the end of a long morning of hearings and, therefore, I have abbreviated my presentation.

Mr. BROWN. Do we have an additional statement from Ms. Meacham?

Ms. HINKLE. Yes, sir.

Mr. BROWN. That will be inserted in the record also.

Ms. HINKLE. Yes, sir.

Today, I will address the FIFRA, or H.R. 3818, and the associated measure, H.R. 3254, the Pesticide Import and Export Act of 1983. We will be pleased to answer questions immediately after the testimony.

Mr. Chairman, and members of the subcommittee, although I wasn't involved with FIFRA two decades ago, many health people were. If they closed their eyes now they could go back two decades and they could see the same problems that plagued the pesticide program in 1964 and in 1969 that we see in 1983.

It was nearly 20 years ago, in May 1964, that the old FIFRA was amended to make it clear that the burden of establishing the safety of pesticides must be met by the registrant before registration. That amendment, labeled the Miller amendment, was the congressional response to the publication of "Silent Spring" in 1962, when Rachel Carson wrote about the nontarget effect that pesticides were causing.

As result, in 1969, the House Committee on Government Operations published a report on the deficiencies of the administration of FIFRA. That report detailed the inaction of USDA, the failure to pursue contested cancellation actions, and in fact, pointed out that whatever actions USDA took consisted of essentially noncontraversial label changes fully agreed to or even initiated by the registrants. Hearings that were requested were suspended indefinitely with the product remaining on the market. USDA, in addition assumed the burden to prove that the product was not safe before it would take any action.

That sorry record resulted in the transfer of pesticide regulations from USDA to EPA in 1970. In 1971, EPA's first Administrator, William Ruckelshaus, affirmed the regulatory responsibility of proceeding upon a substantial question of safety in regard to a pesticide registration. He wrote that the burden of establishing safety and effectiveness of a product remains with the registrant from the time of initial application through continued registration of the product. This is an ongoing responsibility.

In 1975, Judge Leventhal ruled that substantial evidence does not mean the weight of evidence. It can be less than the weight of evidence. In fact, it is enough that the administrative record can contain respectable scientific authority supporting the administrator.

Despite all of this record, in 1979, EPA firmly ignored this standard and established a policy of relying on weight of the evidence in evaluating all risk chemicals.

EPA's action today is limited to cancellation of only minor, out of date uses, those that wouldn't be appealed or contested by registrants or are sure bets—which is the case with EDB—and if their decisions are not contested by registrants, EPA does not have to worry about lengthy adjudicatory hearings, because the public cannot participate.

The 1983 EPA then, like its predecessor agency, USDA, has assumed the burden of proof of the safety of registered pesticides. In fact, as recently as last Friday, September 30, in its explanation of the EDB suspension decision, EPA officials told a group of assembled people, interested parties, that the Agency will not act until it knows that it can win its case against a chemical.

That policy, that approach flies in the face of the *Bazelon* decision which intended the opposite. Bazelon said in 1975:

If hearings are held only after the Secretary is convinced beyond a shadow of a doubt that cancellation is necessary, then they will be held too seldom and too late in the process to serve either of these functions effectively.

Now, in what ways will H.R. 3818 reform legislation and bring order into the current regulatory chaos? In several different ways:

There will be a reasonable time period provided for dates and gaps to be filled. It will shorten the inexplicable delays and registration call-ins.

H.R. 3818 will affirm the 1972 mandated requirement for registration test protocols rather than allowing them to be voluntary, as EPA has interpreted it.

The emergency provision section of FIFRA, which is section 18, has been so abused that EPA is in a regulatory bind as to how to tighten this loophole. Without the time consumptive rulemaking process, prompt legislation would remedy this problem more quickly than the administrative process.

H.R. 3818 also provides for legitimate legal and environmental challenges from the public, a private right as well as many opportunities for public input.

One section which has not been heard from, heard about very much since 1972, is the indemnification of suspended pesticides. That section provoked one of the stormiest debates in Congress in 1971. The Republican administration back then had two consistent and strong objections to the legislative package moving through Congress at that time. These objections centered on data compensation, which has plagued EPA ever since, and indemnification provisions.

It was felt that stocks should be considered an ordinary risk of business, and economic hardship to the extent that it might exist, can be compensated with the pricing structure. In conference, the House provisions for indemnification payment was retained as the price for voluntary suspension. Until 1983, the indemnification provision invoked only a handful of minor cases amounting to less than \$3 million.

In June of this year, nearly \$13 million was awarded to Chevron Chemical Co. for existing stocks of Silvex. At the time of EPA's 1979 suspension of Silvex for home use, Chevron agreed not to contest the suspension in return for indemnity payment. The court of

claims awarded the automatic appropriations of U.S. funds based on the conditions met for section 15 of FIFRA.

The precedental aspect of a \$13 million payment to a company needs to be emphasized for a fiscally minded Congress. It is no longer a matter of whether or not a registrant can be paid off, it is a matter of how much can he get. The U.S. Government should not be required to compensate companies for stocks of substances which have been marketed for several decades and whose risks have been well documented and known for many years. H.R. 3818 would prevent this unwarranted raid on the U.S. Treasury.

What is needed at this point is a firm congressional directive to depoliticize pesticide regulations to correct some of the legacies of the Gorsuch-Todhunter regime. H.R. 3818 is a positive signal for EPA and its critics to restore a measure of public confidence in the pesticide program. With no action, EPA and the chemical industry will stay at the bottom of the public opinion polls.

I have worked with this committee since 1972. This is the first time that pesticides has been a priority for our organization, and for that of other major environmental organizations. The time is now.

Mr. Chairman, I am also a student of Plato and I would like to just add here that when I read Plato there was a long discourse on what constituted justice, and after a consideration discussion, Socrates managed to obtain the definition of justice is really balance, and that is in a nutshell what we want.

Mr. BROWN. Thank you very much, Ms. Hinkle.

[The prepared statement of Ms. Hinkle appears at the conclusion of the hearing.]

Mr. BROWN. Ms. Meacham.

STATEMENT OF EDITH D. MEACHAM, NATIONAL AUDUBON SOCIETY

Ms. MEACHAM. Thank you very much, Mr. Chairman.

The National Audubon Society appreciates the opportunity to testify before this subcommittee and we urge you to support H.R. 3254. We strongly believe that it is time to create a more responsible export policy for the United States of America.

The subcommittee is well acquainted with the consequences of pesticide misuse in lesser developed nations and is, therefore, aware that if this misuse is to end, importing nations which have little or no regulatory system, must be aided by exporting countries whose resources, by comparison are enormous.

The laws which now regulate pesticide exports do not go far enough, and, in fact, do not even fulfill their intended purpose. For example, the notification system, which is supposed to help importing nations control what types of pesticides enter their country, can easily be sidestepped by U.S. chemical companies. They can go through the whole notification process with a subsidiary in the importing country. By the time the government of the importing country is notified, the shipment of chemicals would be well on its way.

H.R. 3254 would end this practice of requiring the importing government to place a formal request for any regulated pesticide

before a sale takes place. This addition to the law would allow countries to preserve their sovereignty: Dumping ground and no U.S. dictation of what is or isn't safe. Decisions would be placed in their hands.

This bill would also add several categories of pesticides to the list now covered by the notification process.

First, pesticides which are restricted be used by trained, certified applicators.

Second, pesticides which are acutely toxic.

Third, pesticides which have been voluntarily withdrawn from the market.

Benefits of including these products are many:

Governments in their attempts to regulate pesticides and assure that the chemicals brought into their country are safely used, need to have this information.

Often pesticide applicators in lesser developed countries are inadequately protected and are not aware of the precautions which must be observed if pesticides are to be used safely.

With this information, governments will be better able to protect workers from accidental deaths and poisonings caused by negligent use of pesticides.

Voluntary withdrawals are also an important addition. Many companies withdraw products from the market in the face of EPA cancellation proceedings. The products can then be legally exported without notification, but that does not mean that there are no problems with the chemical.

Consider the example of Nitrofen or TOK, which in 1982, was temporarily taken off the market by its producer. A 1980 laboratory study determined that Nitrofen caused birth malformations and cancer and a later study published in Science Magazine in 1982 on the teratogenic effects of Nitrofen determined that the chemical caused mice to be born without heads. Despite this evidence, the chemical could still be legally exported without notification.

Another example is BHC. This product was removed from the market after numerous studies showed it to be a potent oncogen. As with Nitrofen, this product is still sold abroad without notification. The example of BHC points to the other side of the whole problem as well.

Residues of BHC have turned up in food which is imported by the United States. The FDA recently found residues of the chemical on rabbit meat imported from the People's Republic of China. Under current export legislation, U.S. consumers are not adequately protected by this type of pesticide contamination. The FDA, in its attempt to stop contaminated produce from entering the United States, must rely to a great extent on guesswork. Sections 2 (a) and (b) would help the FDA by requiring chemical companies to provide data on where their products are shipped, how much is shipped, and what crops the products are being used on.

Section 5 would also protect the consumer by removing the tolerance levels left in place by the EPA. Tolerance levels, legally acceptable levels of pesticide residues on a food product, are still in place for chemicals such as DDT, Aldrin/Dieldrin, and BHC. The reason given for the high-tolerance levels of the chemicals' persistence in the environment but these levels have remained the same

as when the chemicals were widely used for agricultural purposes in the United States. It is time to lower these tolerances to a more reasonable level so that the American consumer will be more fully protected.

For these reasons, we feel that H.R. 3254 is a much needed step toward helping developing nations use pesticides in a beneficial way and toward protecting the U.S. consumer from pesticides which are banned or restricted here.

I would like to submit for the record an article which I was asked to write for Audubon Action, a quarterly newspaper which goes out to all our members. I think it will demonstrate the deep concern which our members have concerning this issue.

Thank you for the opportunity to testify. I will be happy to answer any questions you might have.

[The prepared statement of Ms. Meacham appears at the conclusion of the hearing.]

Mr. BROWN. Thank you very much, Ms. Meacham.

Is the article you wrote a long article?

Ms. MEACHAM. It is on page 11.

Mr. BROWN. Page 11. Without objection, the article on page 11 will be inserted in the record. I don't want to put the whole thing in at this point.

Ms. HINKLE. That newspaper went out to half a million members and it will be in their mailboxes this week.

Mr. BROWN. Thank you. It is going to get them all excited and they are going to write their Congressmen.

Ms. HINKLE. Hopefully.

[The above referred to article follows:]

Reagan Throws Pesticide Boomerang

by Edith Meecham

ALDRIN, DIELDRIN, DDT, 2,4,5-T, mirex, and other powerful pesticides have been declared too dangerous for unregulated use in the United States. But U.S. companies still manufacture huge quantities of these chemicals for the export trade. Many of them go to countries where knowledge and equipment necessary for safe handling are not available.

The problem is especially serious in Third World countries, where local people often are unaware of the dangers of pesticides. Villagers eat recently sprayed crops, walk barefoot through sprayed fields, and are doused with insecticides when spray planes come over because they have not been warned to take cover. Third World farmers can buy, over the counter, pesticides that their American counterparts are forbidden to use.

Thousands of people have died from direct contact with pesticides, and each year hundreds of thousands more are poisoned. Insecticides, herbicides, and other chemicals wreak environmental havoc overseas. In a twisted sort of justice, they often come back to the United States as contaminants in imported foods such as sugar, coffee, beef, and beans.

In January, Audubon President Russ Peterson wrote to the society's members about the international pesticide situation. Because a tremendous number of members sent "Audubon

Action-Grass" calling for reform to the White House, President Reagan ordered Environmental Protection Agency officials to prepare a response. Although EPA's later asserted that the United States was "actively trying to insure the proper use of pesticides abroad," several recent developments show the case to be just the opposite.

✓ An Executive Order issued late in the Carter Administration, establishing a system for notification of foreign governments when hazardous materials were shipped to their countries, has been rescinded. Reagan's plan emphasizes deregulation.

✓ The United States was the only country to vote against United Nations Resolution 37/137, which called for an international network for dissemination of information on hazardous chemicals. This spring the U.N. took the first step in setting up its network. Member nations were asked for information about pesticides and regulatory practices. National Audubon joined other conservation organizations in urging the U.S. State Department to cooperate. But while professing support for information sharing, the official response provided no technical information and reiterated objections to the resolution. A letter to the Secretary-General on

July 27 called the U.N. format "vague" and said it would oversimplify technically complex issues and result in "unusable information." ✓ Since the departure of Anne Corauch Burford, EPA memos have come to light which suggest complicity between the Reagan Administration and the chemical industry. The memos say that Dow Chemical's Don McCollier was appointed to the U.S. delegation to the Organization of Economic Cooperation and Development pesticide exports meeting in Paris last summer, to help EPA and the U.S. State Department shift the organization's emphasis toward "pragmatism, science, deregulation, and private sector involvement" and away from "evangelism and international controls."

The United States, in the past, has been a leader in encouraging effective and safe pesticide use, but the Reagan Administration has relinquished this role and suggested that market forces will be enough to protect developing countries.

To be beneficial, pesticides must be

applied correctly. Problems mount when they are used indiscriminately by people who have no knowledge of their potential dangers. Human and wildlife poisoning could be minimized and crop production enhanced if farmers in developing nations had accurate information about the products they use—how and when to apply them, what dangers they pose, and what precautions to take. The U.N. network seeks to provide exactly that kind of information and disseminate it as widely as possible.

The U.S. Congress, too, is taking some steps. Rep. James Scheuer of New York, with the House Committee on Science and Technology, is investigating the ties between Dow, EPA, and the State Department in an attempt to discover the extent of industry's influence on the Reagan Administration's anti-regulatory stance.

Several pieces of pending legislation would tighten regulations of hazardous exports. One would amend the Federal Insecticide, Fungicide, and Rodenticide Act (up for reauthorization this year) to allow

greater public participation in the regulatory process. Sponsored by Reps. Brown of California and Harkin of Iowa, and Sens. Leahy of Vermont, Metzenbaum of Ohio, and Proxmire of Wisconsin, the legislation also would require the State Department to notify foreign governments when pesticides are withdrawn from the U.S. market, voluntarily or otherwise. Two more House bills, by Reps. Cecil Hefel of Hawaii and Michael Barnes of Maryland, would increase restrictions on U.S. chemical exports and tighten current standards for pesticide residues on imported foods.

Audubon's national capital staff is working with other environmental groups to organize lobbying efforts and a strong grass-roots movement to support such legislation. "The administration's response to the U.N. resolution demonstrates that they will do nothing to stem the flow of pesticides and other hazardous substances," says Maureen Hinkle, Audubon's agricultural policy expert. "Action will have to come from Congress. Constituent mail, particularly from Audubon members, is vital to prompt legislation to stop procrustinating and take action now." □

Mr. BROWN. Mr. Roberts.

Mr. ROBERTS. Yes, sir; thank you, Mr. Chairman.

I am going to make an observation. I am going to have to take a course in Greek history to keep up with this hearing and I would hope that we could get to the point where this discourse could be ended and we could see some action, and I don't know about Mr. Plato or Mr. Socrates, but it is going to take the wisdom of Solomon to get that done.

We have a saying in the farm country, however—"if it ain't broke, don't fix it." I want to make the record very clear that in the current situation we do have a vehicle here and we need a tune up.

I would like to state for the record, too, in regard to your testimony, Maureen, that when you say here on page 15, at the the bottom line here—everybody talks about the bottom line, I wonder what the top line is. At any rate, "H.R. 3818 is a positive signal for EPA and it is critical to restore a measure of public confidence in the pesticide program."

I don't think anybody would disagree with that goal. I would add, however, in all candor there are those in the farm community who do feel it is a negative signal and we have to work that out. We have to get better cooperation or at least an atmosphere where we can work that out. And I want to thank you for a good statement.

I am reminded, Mr. Chairman, as we are being watched over by the former chairman of the House Agriculture Committee, Bob Poage of Texas, and would have been watched over by the last Republican who served—if you can remember that far back—who served as chairman of the House Agriculture Committee, the Honorable Clifford Hope, who happened to come from the First District of Kansas, whose picture is not on the wall. I have been asking that question for some time. I think some surreptitious move has denied us his wisdom.

Bob Poage would say when we were discussing a farm bill, to every farmer who would come in and say we want the best possible bill, and Mr. Poage would remind them, "No, that is not possible when you are writing legislation, it is the best bill possible." That is what I am committed to.

I think we are making a little progress. The missing ingredient here is EPA and what the position of this administration is and with the changes that have taken place, what that position will be. And we have a letter, Mr. Chairman, in response to our inquiries on both sides of the aisle, in regard to the cut and paste issues, that I would like to ask permission to insert in the record at this point.

Mr. BROWN. Without objection, it will be inserted in the record.

Mr. ROBERTS. I think it is responsive. It is promised by this administration and EPA to come to grips with that issue.

[The letter follows:]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Scr 30

OFFICE OF
PESTICIDES AND TOXIC SUBSTANCES

Honorable Pat Roberts
Subcommittee on Department Operations,
Research and Foreign Agriculture
Committee on Agriculture
House of Representatives
Washington, D.C. 20515

Dear Mr. Roberts:

This letter is in response to the Subcommittee's request of September 19, 1983, that Mr. Edwin L. Johnson appear on October 6, 1983, to discuss our progress in examining the so called "cut-and-paste" and other issues. I regret that Mr. Johnson will not be available to attend this hearing. The Subcommittee staff was informed earlier that he has a long standing commitment to participate as a member of the United States Delegation to the Codex Committee on Pesticide Residues in The Hague, Netherlands, during that week. As we agreed with the staff, instead of sending another witness, we are reporting on the "cut-and-paste" issue in this letter. We will also be glad to testify at a later date on the issues of interest to the Subcommittee when EPA sets forth its views on H.R. 3818 and H.R. 3254, or in writing if that would be more appropriate.

After discovering the phenomenon of "cut-and-paste," the Agency negotiated with an independent contractor, the Battelle Memorial Institute, in April this year to conduct a two-phased study of the situation. Phase I was to identify, on a sample basis, the extent to which EPA reviewers significantly excerpted passages without attribution from industry submissions in preparing their comments. Phase II was to look more closely at the substance of those cases identified in Phase I to determine for each case whether it was "cut-and-paste" report writing or "cut-and-paste" reviewing.

There is a significant difference between these practices. In "cut-and-paste" report writing, the reviewer would have done an in-depth review, but, to ease the burden of writing, would have borrowed portions of the summary developed by the persons reporting the study, which the reviewer agreed provided accurate information, without acknowledging the source of the borrowed material. In a "cut-and-paste" review, the reviewer would not have performed an in-depth review but would merely have accepted uncritically the conclusions of those reporting the study. While neither practice is acceptable, of course, we are particularly concerned about the extent of actual reviews.

It is premature to draw statistical or numerical conclusions about the frequency and type of "cut-and-paste" activity in the Toxicology Branch and to draw conclusions about the impact of such activity on the final regulatory actions taken on the chemicals involved. However, preliminary results show that cases in which "cut-and-paste" activity was found and in which the reviewer appeared to have missed something substantive are a very low percentage of the entire population of reviews sampled. The contractor's study is scheduled to be completed by late November 1983.

Nonetheless, even a low percentage is too high when important questions of the public health and safety are at stake. The extent of such missed effects must be reduced to as close to zero as possible. Therefore, we have taken steps to reduce the possibility of future, similar events occurring.

First, all reviewers have been counseled on the unacceptability of this practice under any circumstances whether it were for easing report writing or in lieu of detailed review of the studies. This counseling occurred as soon as the first examples of "cut-and-paste" became known. I am assured by the program that the practice has ceased.

Second, as the Subcommittee was apprised sometime ago, the Office of Pesticide Programs has created a function in the Director's immediate office to provide for routine, ongoing audits of selected chemicals to detect any further deviations from accepted review practices, or other policies or procedures. Detailed procedures are under development to fully implement these functions.

Third, Harvade, the chemical which was initially implicated in the "cut-and-paste" issue, was rereviewed. After extensive review, the Agency concluded that the incidence of rare brain tumors had not been properly evaluated and therefore Harvade should be regulated as a weak oncogen. The Scientific Advisory Panel concurred with this reevaluation. Mr. Johnson has written the Chairman a separate letter regarding this rereview. I enclose a copy of that letter for your convenience.

Fourth, immediately upon finding several chemicals with positive indications of "cut-and-paste" activity, the Office of Pesticide Programs issued a memo stopping further major regulatory actions on the chemicals involved until the significance of these findings could be assessed. The current Battelle effort will help expedite the early reevaluation of these chemicals. We will first reevaluate those chemicals where evidence of "cut-and-paste" activity is weak or inconclusive; next, those chemicals where "cut-and-paste" activity has been detected in several reviews of the same chemical; and finally, those chemicals for which there is a pending review action. By ordering the reevaluations in this manner, we hope to deal promptly with those chemicals in which significant effects were overlooked as a result of "cut-and-paste" activity. In addition, we will avoid unduly retarding market development by industry where it is unwarranted by any significant errors made in the review or regulatory decisions as a result of "cut-and-paste".

Fifth, based on our preliminary findings, we have temporarily reassigned certain individuals to activities other than data review until the significance of the findings can be determined. We are of course prepared to take whatever personnel actions are appropriate after the final information is available.

Dr. John Moore, our Assistant Administrator-designate, has taken a personal interest in all aspects of scientific review and improving its credibility, including a final resolution of the "cut-and-paste" issue. The Office of the Assistant Administrator, during my temporary holding of the position, and as Dr. Moore steps in after confirmation, will be taking a close look at the review procedures and policies and practices followed in both the Office of Toxic Substances and the Office of Pesticide Programs to assure that reviews are done consistently across offices and with the best available and most current scientific thought. In this way we will assure that they are conducted in a scientifically sound and credible fashion within the program.

I hope that this brief report will satisfy the immediate need for information on this topic. We will continue to keep the Subcommittee closely apprised of our progress and findings as the study moves toward completion. Please do not hesitate to call on me if I may be of further service in this or in other matters. As I noted earlier, we will be pleased to respond to the other issues raised in the Subcommittee's letter to Mr. Johnson when we testify on H.R. 3818 and H.R. 3254 later in October or early November, or will provide further comments in writing if that would be more appropriate.

Sincerely yours,



Don R. Clay
Acting Assistant Administrator
for Pesticides
and Toxic Substances

Enclosure

Mr. ROBERTS. Second, in terms of the EPA being here and making it very aware that the Administrator and nobody else is aware of the pesticide problem, and that if the administration is to have a bill in reference to this legislation, that he will be here during the next hearing and before your very eyes the chairman and I have signed a letter just this morning urging the Administrator to be here and asking him to respond by October 14, as to whether or not he can come here. That, I think, will be the catalyst that gets us off dead center to get us some progress on this issue, and I am very hopeful that will take place.

Thank you, Mr. Chairman.

Mr. BROWN. Do you want to insert that letter to Mr. Ruckelshaus?

Mr. ROBERTS. We have inserted everything else, we might as well insert that.

Mr. BROWN. Without objection.

[The letter follows:]

GEORGE F. BROWN, JR., CALIF.
CHAIRMAN

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MINORITY CONSULTANT

U.S. House of Representatives
Committee on Agriculture
Subcommittee on Department Operations,
Research, and Foreign Agriculture
Room 1301, Longworth House Office Building
Washington, D.C. 20515

October 6, 1983

Honorable William D. Ruckelshaus
Administrator
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Ruckelshaus:

We are writing to respectfully request that you appear personally before our Subcommittee on Department Operations, Research, and Foreign Agriculture to discuss the evident problems that have surfaced in EPA's pesticide program and your intentions in formulating policy changes within the agency to address these difficulties.

As you undoubtedly know, our Subcommittee has been deeply involved for the last several years in exploring the issues involved, and we have developed an extensive set of hearings replete with discussions of the difficulties that have surfaced.

We have today initiated yet another round of hearings on possible amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and it is evident that the problems remain and may have been compounded. Unfortunately, it appears that there is continued controversy about the proposed solutions contained in the bills (H.R. 3254 and H.R. 3818) before the Subcommittee.

Under separate cover, we are transmitting to you copies of the testimony and other material presented to the Subcommittee. While we recognize and respect the concerns that have been expressed, it is our intention to proceed in our efforts to resolve the evident problems that have been identified, and we expect to schedule further action in the Subcommittee before the adjournment of the 1st Session of the 98th Congress.

We want very much to work with you, and we feel the Subcommittee will benefit greatly from your personal appearance and your counsel on these matters. We will be happy to cooperate with you and will, to the extent possible, schedule our next

session to accommodate your schedule, hopefully before the end of October.

We would like to announce the date of our next hearing as soon as possible. We would appreciate, therefore, hearing from you no later than the close of business Friday, October 14, as to a convenient time.

We look forward to your favorable response to our request, and we will be happy to talk to you personally should you feel it necessary.

With best wishes.

Sincerely,

George E. Brown, Jr.
Chairman

Pat Roberts
Ranking Minority Member

Enclosures

Mr. ROBERTS. That is not a question, that is a long statement, and I apologize for remounting my soapbox.

Thank you for your testimony.

Mr. BROWN. Mr. Penny, do you have any questions?

Mr. PENNY. I have no questions.

Mr. BROWN. Mr. Evans.

Mr. EVANS of Iowa. I have no questions.

Mr. BROWN. Well, Ms. Hinkle and Ms. Meacham, you have made an excellent contribution to our hearing and I think, as you recognize, that you may have at least initiated a course of action which will provoke a move on the part of the Agency to begin to establish their own position, which is what we had hoped to accomplish. And in the process, we may be able to make considerable progress toward some improvements in the legislation.

I have no further questions myself and we thank you for being here.

The subcommittee will be in recess until 2 p.m. this afternoon when we will hear from another distinguished list of witnesses.

[Whereupon, at 12:05 p.m., the subcommittee was recessed, to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

Mr. OLIN [acting chairman]. Ladies and gentlemen, I would like to call the afternoon session of the subcommittee to order. We are going to continue the hearing begun this morning on the two bills submitted with regard to the FIFRA authorization. We have as the first witness Mr. Jim Walesby, chairman of the Farm Chemicals Committee of the National Association of Wheat Growers, located in Washington.

Mr. Walesby.

STATEMENT OF JIM WALESBY, CHAIRMAN, FARM CHEMICALS COMMITTEE, NATIONAL ASSOCIATION OF WHEAT GROWERS, ACCOMPANIED BY MARGIE WILLIAMS, DIRECTOR, OFFICE OF LEGISLATIVE AFFAIRS

Mr. WALESBY. Mr. Chairman, members of the subcommittee, I am prepared to give my testimony in an abbreviated form, asking that the full text be inserted into the record of the hearing as well as our pesticide exposure study which I will allude to at a later time.

Mr. OLIN. We will be happy to receive your longer testimony in writing.

Mr. WALESBY. Thank you.

The National Association of Wheat Growers appreciates this opportunity to present its views on H.R. 3818, the FIFRA Reform Act. I am Jim Walesby, chairman of NAWG's Farm Chemicals Committee, and a wheat producer from Almira, Wash.

Pesticides are essential to efficient wheat production. The NAWG favors Government regulation of pesticide products, but regulation that is designed only to provide proper guidance and tools for resolving recurring pest problems. Such regulation should encourage, and not discourage, research and development of improved products and application techniques, while allowing the farmer to use the products confidently in accordance with registered directions. Those who rely on pesticide products to guarantee an abundant food supply should be protected from threats of unnecessary litigation and roadblocks purposely erected to severely limit or completely eliminate the use of pesticides.

We favor tough requirements for registration and use and we favor removal of products from the market which are found not to meet current standards. We believe the current FIFRA basically provides these guidelines, if properly administered. Any modifications should improve, and not obstruct, the registration process or the correct usage of chemical products. In our opinion, however, many of the provisions of H.R. 3818 would create greater complexity, more controversy, and increased litigation in this regard. In addition, we fear that the legislation would weaken, and possibly destroy, the research commitment vital to providing better tools for pest control.

Section 3 of H.R. 3818 modifies section 2 of FIFRA and proposes a new definition of "active ingredient." Currently the definition of the active ingredient in a pesticide formulation is the ingredient responsible for the pest control activity. These active ingredients are subject to extensive and exhaustive testing prior to acceptance for use. Reclassifying nonactive inert ingredients as active will confuse the issue, further complicate registration and use and not contribute significantly to the public safety. In addition, these inert products are already regulated by EPA.

Section 3 also proposes to prohibit application of restricted use products by farmworkers operating under the supervision of a certified applicator. Such a prohibition will create an unnecessary hardship on the individual farmer who can and does properly supervise his employees in various farm operations, including application of chemicals. If the responsibility for proper application is

diverted from the farmowner or field manager to the farm laborer, then proper application can be expected to be reduced.

Section 4 of the proposed bill modifies the activity and authority of the EPA Administrator regarding registration. The proposed changes governing data requirements limit the Administrator's authority to make commonsense decisions.

Further, to require the Administrator to provide for public notice and comment whenever a waiver or variance of data requirements is considered for a specific registration is an unnecessary and time-consuming burden on the Administrator and will discourage efficient evaluation of the new product. We as users of pesticides believe it is proper and desirable to allow EPA professionals to judge the facts of any case without unnecessary delay, or obstructionist intervention that becomes inevitable when the general public is invited to participate in this kind of technical decision. Current law adequately insures public participation in pesticide regulation without this amendment.

Section 4 of the bill also deletes current authority for the Administrator to waive efficacy requirements for agricultural pesticides. In 1978, Congress added this provision to the act and gave the Administrator the option to waive submission of efficacy data in order to allow Agency resources to be more sharply focused on other aspects of the registration. It should be recognized that products have been and still are intensively tested by industry, State, and Federal experiment stations to determine their usefulness. It is a waste of resources for EPA to attempt to reevaluate such tests except in special cases where their review is deemed pertinent to the issue. The efficacy of agricultural pesticides is better determined by agricultural experts and the marketplace than by EPA.

Section 4 also provides for modification of the registration process to give any person the right to an administrative hearing to challenge a decision by EPA to grant a specific registration. This will certainly result in many challenges by professional antipesticide groups, simply to delay, and hopefully sidetrack, the registration process. EPA must be allowed to exercise its authority to grant a final registration without undue interference.

Section 4 also deletes the Grassley-Allen amendment which was attached to the FIFRA in 1978. This amendment required EPA to have validated evidence to support any action to suspend or cancel a pesticide or restrict its uses. This was added to prevent the loss of products through unfounded action initiated by invalid claims against the product, and we believe the provision should be retained.

Section 4 would require extensive reregistrations of products approved for use before 1972. This requirement would pose an impossible task for manufacturers, and many safe and useful products would be jeopardized because of lack of time and resources to complete the reregistration process before the legal deadlines. EPA has proceeded with the reregistration process on chemicals currently under special review, and it should continue to do so. But reregistration should not be required as evidence of a valid registration.

Section 5 of H.R. 3818 would amend procedures for approving experimental permits. The modified provisions would certainly ob-

struct and may essentially make it impossible to properly test new product candidates under actual field conditions.

Further, a total ban on testing any product previously canceled or suspended is too rigid. This question should be judged solely on the individual merits of the case at hand.

By instructing the Administrator to either cancel a product or hold hearings in response to loosely defined circumstances, section 6(b) of H.R. 3818 guarantees obstructionist litigation aimed at the suspension of safe and useful chemicals. The Administrator must continue to be provided discretionary authority regarding emergency suspensions and public hearings, as in current law.

Section 18 of FIFRA is designed to provide for emergency use of products in a special situation. Section 18 authority has commonly been used for products which have been sufficiently well advanced in their development to be of known value, yet not cleared for the emergency at hand. The proposed modification in H.R. 3818 would unreasonably restrict Federal and State authorities to act effectively to meet emergency pest problems.

Section 24 modifications would add needless restrictions to States' registration authorities to meet special local needs. Currently, any such special State registration can be extended only to products fully registered under EPA for specific uses which do not include the special local need at hand. In using these authorities, States are not bypassing EPA or approving nontested products.

Section 17 of the proposed legislation requires development of new regulations governing pesticide use, taking into account the need to establish buffer zones for pesticide application, as well as advance warning to "individuals present in the areas."

Mr. Chairman, the EPA considered establishing buffer zones for application of pesticides in cotton fields 3 years ago, but abandoned this initiative when it became clear that there is no practical means for a farmer to adhere to such rules. The establishment of buffer zones would be tantamount to simply prohibiting the use of chemicals on cropland. The boundaries of a field are precisely where weeds and insects gestate, and where early control is most important. If the producer could not treat the cropland in these buffer zones, then he would be forced to apply chemicals more often in order to control the pests which would be allowed to proliferate in the boundary zones and spread to the central area of the field.

Providing advance warnings of pesticide application intentions to "individuals in the areas" would likewise pose an impossible task for producers to comply with.

To conclude my statement, Mr. Chairman, I would like to share with you the findings of a pesticide exposure study which the NAWG has just released. The study is a comparison of health histories of wheatgrower families who, naturally, have been exposed to a broad range of herbicides and pesticides over a period of many years, with the families of a sibling of the wheatgrower. The siblings' families were not occupationally exposed to crop protection chemicals.

The study, which focused on reproductive abnormalities, found no negative trends related to reproduction in wheatgrower families who participated in the study. In fact, there were lower occur-

rences of miscarriages, abortions, and stillbirths in families of wheatgrowers than in their siblings' families. This same trend is evident in the evaluation of the numbers of birth defects in wheat-grower and sibling families.

Mr. Chairman, I would like to ask that a more complete summarization of the conclusions of the study be included as part of my statement at today's hearing. The study is attached to my statement.

Thank you very much for your consideration of the views of the National Association of Wheat Growers regarding H.R. 3818. I would be pleased to answer any questions which the subcommittee may have.

[The prepared statement of Mr. Walesby appears at the conclusion of the hearings.]

Mr. OLIN. All right. Thank you.

Mr. Roberts, do you have some questions?

Mr. ROBERTS. Yes, Mr. Chairman. Thank you.

First, I would like to welcome Jim to the subcommittee and thank you on behalf of any producers in regard to what the National Association of Wheat Growers is doing in this effort, as well as all the other legislative problems we are confronted with. I see in the audience Marge Williams who does a good job in that respect as well. I think you have done a good job really in highlighting some of the problems that the producer feels we have with this legislation. Hopefully we can work that out.

Let me ask you, up in Almira in the State of Washington where you are from, are the producers aware of this legislation to the extent that you think they should be? I am talking about pretty much the gist of your testimony. Are they really aware of this bill, and what could come down the pike?

Mr. WALESBY. I would really doubt it. I suspect that possibly a lot of producers all over the United States aren't aware of the impact of this bill.

Mr. ROBERTS. Is it the plan of the wheatgrowers to really publicize what is happening here in the subcommittee and in the other committees of jurisdiction in the Congress to the extent that the membership of your organization, State by State, county by county, which is the way we are organized, become fully aware of the implications of this legislation?

Mr. WALESBY. Yes. That, of course, is one of the functions of our organization. We are a grassroots organization and work from the bottom up, starting with resolutions at the county adopted by the States submitted to the National Association of Wheat Growers at which policy is adopted which the wheatgrowers operate on.

Mr. ROBERTS. I think Wheat Growers has done a good job in that respect. Some of our other farm organizations have as well, in regard to the commitment that we make some progress in this field. But I am not too sure that some of our major organizations have really gotten down yet at the county level. I am talking about Ford County in Kansas and in terms of Dodge City where we have a strong wheatgrowers membership, and when I met with them recently and went over some of the problems we face with agriculture, the fact that we have to do a better job in this respect in the

eyes of the public and what we face with EPA, et cetera, in general some of the concerns we have had before the subcommittee.

But I must tell you that not many were aware of the pending legislation and more specifically, some of the individual concerns here section by section, section 4, section 5, so on and so forth. I did my best to inform them, and I would hope that that would be the case here down the road.

Would you care to comment on that? I think it is in the best interest of the producer to know this and then we can get to a better job, it seems to me, of trying to work out our differences.

Mr. WALESBY. Yes, I agree with you wholeheartedly. Of course, we put out a magazine monthly which goes out to 60,000 wheat producers all over the United States. We have had several articles on the FIFRA amendments in the past, and will also do one on this testimony today to try and educate our growers out there as to what the problem is.

I think oftentimes the problem of pesticides is more impacted region to region. In other words, we have a real problem with groups in the Pacific Northwest that possibly they don't have in Kansas. Therefore, the growers aren't quite as aware of some of the problem situations that arise as we are in the Northwest.

Mr. ROBERTS. This isn't only confined to the wheatgrowers. As I indicated before, over 30 farm organizations have indicated their concern and sometimes outright opposition to this bill. I am just thinking out loud here. I realize there has been some real research done on the part of the farm organization but I don't think your average farmer out there is aware of the consequences or what looms over the horizon in regard to the debate that is happening. I think that would be a very healthy thing.

I know we tend to think that what comes out of Washington to a great extent represents a problem and we worry more about what Washington does to us as opposed to for us. But what with the possibility of an embargo or possibility of the lack of a wheat program that makes sense, et cetera, then the farmer thinks, "Well, we have got that one whipped or at least I don't have to worry about that." And he goes back to his tractor and says, "We are going back to business. All of a sudden, we look over the horizon and here comes the guys with the black hats again.

I am just thinking we need a real education process again and the farmer has to become directly involved in this issue of public safety or we are going to end up with some things that we really don't want.

I am also interested in the last page of your testimony here where you are talking about the study, the pesticide exposure study and would commend to the attention of my colleagues the reprint from the "Wheat Grower" by Marge Williams who is in the committee room here. Has this study been sent to all members of the committee, or just the summary of the study?

Mr. WALESBY. It has been sent to all the members of the committee.

Mr. ROBERTS. I think I would expand that on out to the other committees of jurisdiction and point out that your organization is concerned about this and that this is the kind of effort that I think many farm organizations should be involved in. I know I got a sum-

mary. I just wasn't aware of whether we had the full summary. Did you send the summary of the full study?

Ms. WILLIAMS. The full study will be completed within the next few months. All we do have available presently is a summary of results.

Mr. ROBERTS. I see.

Ms. WILLIAMS. We will submit that to the members of the committee.

Mr. ROBERTS. Well, I think it is a good statement and shows the concern of farm organizations not only involved with the cost side of a lot of these problems, but also the benefit side in terms of public safety. We have to do a better job of that in terms of public relations and you are doing that job. I would just like to see you get the credit.

Thank you.

Mr. OLIN. Mr. Penny.

Mr. PENNY. I have no questions.

Mr. OLIN. I take it from your testimony and looking over your statement, you have gone carefully through the proposed bill. You commented about all the things you objected to. Could you comment about portions you may be in favor of? Are there portions of this bill you favor in the reauthorization process?

Mr. WALESBY. Basically, I think our position is that we feel the mechanics are in line for the EPA to regulate pesticides. We feel H.R. 3818 in essence is going to mandate policy to EPA that is going to make them hard to carry out the programs that are working right now. I should say that are in line right now. I think the thrust should be with the Administrator of the EPA to administer the programs that are underway right now.

Mr. OLIN. Would you favor no action at all then at this time or just reauthorizing the law as it stands?

Mr. WALESBY. I think possibly the action at this time is a little premature.

Mr. OLIN. Would you be available to work with the subcommittee as we work through this process if we need more information from you or more specifics to your objections or thoughts?

Mr. WALESBY. I would be happy to work with the committee in any way I could.

Mr. OLIN. If you have any more specific ideas, we would be happy to receive those from you.

Mr. WALESBY. Thank you. I will do that.

Mr. OLIN. Thank you very much for your testimony.

We have next on the agenda Ms. Kay Pinkus, International Sanitary Supplies Association, Chicago. We are very pleased to have you with us this afternoon.

STATEMENT OF KAY E. PINKUS, ASSOCIATION ATTORNEY, INTERNATIONAL SANITARY SUPPLIES ASSOCIATION

Ms. PINKUS. Thank you, Mr. Chairman, members of the subcommittee. Thank you very much for allowing me the opportunity to speak today.

My name is Kay Pinkus. I am the association attorney for ISSA, the International Sanitary Supplies Association. ISSA is a 60-year-

old trade association composed of over 2,800 manufacturers and distributors of cleaning and maintenance products and supplies used in hospitals, schools, food establishments, commercial businesses, and institutions.

In 1981, EPA shut down the Beltsville, Md. testing laboratory. ISSA supports an amendment to the Federal Insecticide, Fungicide and Rodenticide Act calling for the reopening of this Federal testing facility on a limited basis. ISSA advocates the use of this central facility to resolve testing disputes which occur at the State level. We believe that manufacturers of disinfectants should be able to resolve any questions concerning the efficacy of their products once and only once at the Beltsville testing facility. It is a waste of time and money for all parties concerned to resolve disputes over the efficacy of the same product in each and every jurisdiction that is doing the test.

This problem is particularly egregious because the testing involved is biological testing. Biological testing, by its nature, defies reproducibility. In contrast to other types of testing, such as chemistry testing in which a 1 percent variability rate can be achieved, experts say that a 15- to 25-percent variability rate is the norm. Given this inherent potential for disputes over testing, it is imperative that companies have the opportunity to clear their products, the vast majority of which are marketed in many States, at a national forum.

As evidence of the variability of test results, State enforcement actions have already been taken and subsequently rescinded. This results in unfair negative publicity about the products involved. While accusations of ineffective products made the headlines in several newspapers, the fact that many products were later cleared went unmarked by the press. Unfair negative publicity could not be eradicated by the reopening of the Beltsville facility, but at least it would only have to be endured one time.

The Federal testing facility would simply be used to establish uniform protocols for testing. With the input and assistance of industry, environmental groups, and the Association of Official Analytical Chemists, the Federal facility would be used to establish fair and adequate changes in testing protocol and to initiate new testing methods when necessary. A central facility is ideally suited to set uniform protocols in order to lessen variability of test results.

The reopening of the Beltsville testing facility would not require a halt to testing now being done at the State level. The Beltsville facility would also be used to allow the Federal Government to act as a final arbiter of disputes between companies and State enforcement authorities. An enforcement action which is threatened or taken by a State would be appealed to the Federal EPA; the testing laboratory at Beltsville would be used to conduct tests on the product in this context. If the controversy is favorably resolved, the company would be able to confidently market this product in all 50 States without having to deal with the issue again.

The reopening of the Beltsville testing facility would be beneficial to industry. Without it, the system is time-consuming, expensive, and duplicative. The cost to industry is transmitted to the public in the form of higher prices. Reopening the Beltsville facility would also allow public interest organizations to keep a more effec-

tive check on efficacy issues. These organizations would be more effective because they would not have to duplicate their efforts on the same issue in every jurisdiction that is doing testing.

In summary, the reopening of the Beltsville testing facility would place a central authority in an area where variability and uncertainty would otherwise exist in 50 different States. This would result in a savings of time, money, and trouble to all parties concerned, with the additional benefit of heightened protection of the public.

Thank you, Mr. Chairman and members of the subcommittee.

Mr. OLIN. I thank you. Any questions, Mr. Roberts?

Mr. ROBERTS. No, sir.

Mr. OLIN. Mr. Penny.

Mr. PENNY. No questions.

Mr. OLIN. Mr. Franklin.

Mr. FRANKLIN. No questions.

Mr. OLIN. I might ask, Ms. Pinkus, did you go into any other aspects of the FIFRA regulatory process that you wanted to comment on?

Ms. PINKUS. No. This is the only issue that I wanted to deal with today.

Mr. OLIN. I think your testimony is very clear. I am sure the committee will take it into account. Thank you very much.

Ms. PINKUS. Thank you.

Mr. OLIN. Next we have a two-member panel, Mr. Jacob Scheer, Natural Resources Defense Council, Washington, accompanied by Mr. Roque Sevilla, president, Fundacion Natura, from Ecuador; and Ms. Barbara Bramble, National Wildlife Federation, Washington.

Mr. SCHEER. Thank you, Mr. Chairman.

Mr. OLIN. Perhaps we will just take you in the order listed here.

Mr. Scheer, would you like to start off.

**STATEMENT OF JACOB SCHEER, SENIOR STAFF ATTORNEY,
NATIONAL RESOURCES DEFENSE COUNCIL, INC.**

Mr. SCHEER. Thank you, Mr. Chairman. I am Jacob Scheer, senior staff attorney with the Natural Resources Defense Council. I am accompanied here today by Roque Sevilla who is president of the Fundacion Natura.

As you know, Mr. Chairman, we have testified on this issue before the subcommittee in 1977, 1978, and 1981. Over this period of 5 years, we have witnessed a tremendous increase in concern worldwide regarding pesticide exports, particularly the problem of pesticide abuse in developing countries. This issue has been and is being addressed now at the United Nations, at the United Nations Environment Program, at the U.N. Food and Agricultural Organization, at the OECD and within the European Parliament.

The United States, particularly the U.S. Congress, has shown real leadership in addressing the problem of pesticide exports and I hope it will do so in the future.

At this point, I would like to express our strong support for the bill introduced by Congressman Heftel, the Pesticide Import and Export Act of 1983, H.R. 3254. The Heftel bill would strengthen the

requirements, existing requirements, for pesticide exports, referring here to exports of pesticides which have been either suspended or canceled, or never registered for use in the United States.

It would close some of the existing loopholes in existing export notification requirements, and it would move toward U.S. policy toward the concept of insuring that foreign purchasers and foreign governments importing pesticides are in a position to make informed judgments as to whether to use those projects.

At this stage, I would like to leave a more detailed analysis of the bill to the other witnesses on the panel, Barbara Bramble. I will be submitting shortly a written statement providing some additional views on behalf of the NRDC.

I would like to yield to Roque Sevilla. Mr. Sevilla is in the United States as a Duggan fellow of the NRDC. The purpose of the Duggan fellow, which we established 3 years ago, is to provide leaders from other countries to come to the United States to see how we address environmental issues, to do some research and gain some practical experience.

I think as you will see from Mr. Sevilla's testimony that we can also learn a lot from them about their problems and particularly the impact of U.S. policies on Third World Countries.

With your permission, I would like to turn the mike over to Mr. Sevilla.

Mr. OLIN. I am pleased to have you with us today, Mr. Sevilla, and we look forward to your comments.

STATEMENT OF ROQUE SEVILLA, CHAIRMAN, FUNDACION NATURA, QUITO ECUADOR

Mr. SEVILLA. Thank you very much, Mr. Chairman. I am going to give a written statement that I ask you to include and I will make a summary of it now.

Mr. OLIN. That will be fine.

Mr. SEVILLA. I am chairman of the Fundacion Natura, a nongovernmental organization that works in Ecuador in fields like environmental education and pesticide control. I consider it a great honor and privilege to have the opportunity of presenting my views on pesticide exports to the subcommittee.

I must point out that in addition to my activities on environment, I am a businessman and farmer. I use pesticides on my own crops. I recognize both their benefits and hazards. I do share with many others in Latin America concern over the growing problems of pesticide abuse.

In a meeting that was held a few months ago in Mexico of the Pesticide Action Network, I came to the conclusion that the pesticide problem in Ecuador was also a characteristic of all the other Latin American countries.

For example, it is almost impossible to use the pesticide under safety conditions. It is impossible to use clothes and wash them afterward. For instance, in the High Andes, peasants and farmers would use heavy panchos and woolen hats while they are spraying and there will be no possibility of washing them afterward. They wouldn't be able to use gloves or boots or goggles or masks in that area because it is much too expensive. Of course, it will also be im-

possible to call for the doctor, if you are living in the High Andes region at more than 9,000 feet altitude and far away from an urban area. Unfortunately, many highly toxic pesticides are imported to Latin America and to Ecuador. Of the most used pesticides, 11 of them are completely banned or restricted in the United States.

Unfortunately, a number of American companies are the ones that export those products or have sales representatives in Ecuador. We really believe that both sides, the importer, the government of the importing nation and exporter, must make great efforts in controlling those exportations. I appreciate the efforts that the U.S. Congress is making to assure that pesticide purchasers are aware of how dangerous an importation of a product might be. And I support the bill of Congressman Heftel which will strengthen requirements for exportation.

Many highly banned products are used in Latin America for producing articles that are exported to the United States so that the bad health problems we have as a consequence of pesticide use will revert also to American people when they will consume this import product. I consider that maybe it would be important that there will be a prohibition against export of any pesticide product which is not approved for use here or which has been suspended, canceled, or restricted unless both the United States and importing government can agree that such a product can be safely used and there is no safer alternative.

In addition, I believe that it is in the interest of the United States to assist developing countries to improve their regulation of pesticides, education and training of workers, and research of pest control methods more appropriate to match different conditions there.

There is clearly a very difficult problem which will require cooperation among all the responsible parties, exporting governments, agrichemical companies, farmers, farm workers, and public. It is a challenge which the protection of our health, environment, and food supply demands to be met.

I do appreciate your concern and the chance to appear here.

Mr. OLIN. Thank you.

[The prepared statement of Mr. Sevilla appears at the conclusion of the hearing.]

Mr. OLIN. We will continue with Ms. Bramble, then have questions for the group.

STATEMENT OF BARBARA J. BRAMBLE, DIRECTOR OF INTERNATIONAL PROGRAMS, NATIONAL WILDLIFE FEDERATION

Ms. BRAMBLE. Thank you.

I am Barbara Bramble, director of international programs of the National Wildlife Federation and I am happy to appear here today on behalf of the federation which is the Nation's largest conservation organization. It has over 4 million members and supporters, the principal constituency of which are sportsmen who have been concerned for years about the proliferation of pesticide use both in the United States and abroad which is causing decimation of fish

and wildlife, and threats of long-term damage to the natural balance of ecosystems.

I would like to call the attention of the subcommittee also to a statement that is being submitted to the subcommittee today by the Florida Fruit Growers Association and the Florida Tomato Growers Association in support of the Heftel bill. And I believe this is an illustration of the broad base that is growing in favor of this legislation.

I would like to summarize my written testimony this afternoon, but I would ask that the entire statement be entered into the record of this hearing.

Mr. OLIN. We will do that.

Ms. BRAMBLE. This subcommittee has already compiled substantial information on the problems of pesticide use such as widespread human poisoning, environmental damage, and economic disruption caused by the higher and higher costs of chemicals. Some of this evidence is described in my written testimony.

But what I would like to do today is to concentrate on the Heftel bill and its approach to the problems of pesticide residues and the misuse of pesticides in developing countries. The Heftel bill makes three important changes in FIFRA which affect pesticide residue monitoring.

First, they amend section 7 to require exporters to file more complete information with EPA concerning the quantities, destination, and end use of exported products. And section 3(a) would require the importing government to disclose the intended use of the pesticide in that country. This information would be shared with the FDA to permit better targetting of the residue monitoring tests.

Next, section 5 would enforce the revocation of tolerance levels when a pesticide use is canceled or suspended here. This will reduce the amount of canceled and suspended pesticides that can be used on food destined for U.S. markets.

Finally, the bill would close a loophole which currently encourages export and widespread use of pesticides which have only temporary perhaps emergency limited use permits in the United States.

In a major step forward, the Heftel bill would limit tolerance to domestic food products unless the use permit specifically deals with foreign uses.

Next, the Heftel bill addresses the problem of pesticide misuse. It has generally improvements in the notification system. As you know, the current system is a two-tiered arrangement involving an acknowledgement from the importer company that the product is unregistered in the United States, and then a notice is sent through the State Department to the importing government. By this time, of course, the shipment is well on its way, or perhaps already distributed within the receiving country.

For developing countries, some of which are beginning to regulate hazardous chemicals, the opportunity to exercise their sovereignty in such matters as pesticide imports is fundamental. And if their choice is to be a real one, it must be implemented before the shipment arrives on the dock. The Heftel bill places emphasis of the notification system where it belongs, on the government-to-government exchange of information.

For certain categories of chemicals, the importing government must request the shipment which in some countries will encourage its consideration of potential impacts of misuse, lack of safety equipment, et cetera. Furthermore, section 3, which covers restricted use and acutely toxic pesticides would require a description by the government of the steps they would take to make available instructions for safe handling and use and disposal.

The big question surrounding the notification process is, of course, what chemicals and what products are covered. Currently, FIFRA requires notification for pesticides not registered for use in the United States. The Heftel bill clearly states that pesticides voluntarily withdrawn from the market are included within this requirement, as well as those for which some or all uses or formulations were canceled or denied.

The present provision should have been understood to include these categories, but there is some confusion on the part of EPA and industry. The reasons why these categories must be covered are clear.

First, hazardous pesticides cannot be permitted to escape the notification system simply because the producer evades an EPA cancellation. For example, TOK nitrofen was voluntarily suspended in the face of regulatory action early in the decade. Remaining stocks have disappeared but no export notification has been sent to any country. TOK is the most potent substance ever tested at EPA. It could not.

Second, as you know, most registration cancellations in the United States cover only certain uses of a pesticide so there must be no implication that a pesticide needs to be totally banned to come within the notification procedure. Yet, apparently, industry and/or EPA is interpreting section 17 to be limited in this way.

For example, Endrin, which was canceled in 1979 for use East of the Mississippi, still has permitted but restricted uses in the West. It was exported in 1982, yet no notification was sent. But if the Heftel bill is going to specifically enumerate two types of unregistered pesticides, that is voluntarily withdrawn and partially canceled, it must then list suspended and never registered as well in order to retain the extent of the present coverage in current language.

We would recommend, however, a simpler paragraph which covers all of these categories and I have appended a draft of suggested language to help the subcommittee. It is appended to my testimony.

The Heftel bill makes important progress in section 3(b) by including restricted use and acutely toxic pesticides in the notification process. This is significant because these are the chemicals which may pose the most immediate in developing countries.

As a broad generalization, many of the pesticides with use cancellations in the United States, are long-term environmental problems. Cancer, disease, birth defects, other chronic effects are their impacts. On the other hand, restricted use pesticides tend to be immediately hazardous to health because they are poisonous and in this country they are only allowed to be used by certified trained applicators wearing protective equipment and clothing.

In developing countries, thousands of poisonings and fatalities occur each year because workers do not understand the risk and/or cannot obtain protective equipment. In this bill, while the importing country need not actually request these chemicals, the crucial point is that prior to export, both purchaser and regulatory official must sign an acknowledgement of the hazards.

In and of itself, of course, this provision is not going to reduce poisonings but it is a step in the right direction.

As we have stated before, we believe the Heftel bill would bring important improvements to U.S. treatment of pesticide exports but we believe additional measures are needed as well.

First, as was correctly noted by Congressman Roberts and Gunderson at the June 9 hearing, little progress will be made until education and safety training reaches rural workers and at least a rudimentary training capability is established in the importing countries. Therefore, besides information, the Import and Export Act should make available on request technical assistance in health and safety training and regulation. Similarly, widespread establishment of integrated pest management is the only way pesticides will have any long-term use in agriculture.

The collapse of the unsustainable cotton growing technology of the last few decades is only the first example of the hazardous of dependence on chemicals. Thus, pesticides export legislation should also mandate a greatly increased effort by the United States to assist establishment of systems in the field and appropriate agricultural research capabilities.

Next, to deal with the problem identified by Congressman Volker at the June 9 hearing in the proposed legislation, it should cover pesticides manufactured in the United States but never registered for use here.

FIFRA currently requires no health and safety or environmental information on these chemicals. This results in a serious problem. If an importing government asks for data on appropriate safety precautions or acute or chronic effects or threats to the environment posed by the use of such chemical, EPA has nothing to change. Thus, in order to make the notification system work in a rational way, basic health, safety, and environmental data should be required for all pesticides produced here whether or not they are registered.

Enforcement is another area which should be tackled by this subcommittee. Currently, production information collected under section 7 could be used to check whether producers are complying with the section 17 notification requirement but this has never been done. For example, Endrin and Toxaphene, both under significant use cancellations, were exported in 1982 and 1983, but no notices were sent and no enforcement action has occurred.

If EPA believes it lacks the authority or resources to enforce section 7, that should be discussed when its witnesses appear here at a later hearing.

Next, since the restricted use pesticides are often immediately hazardous to health, to wildlife also, we believe they should be treated as stringently as those with canceled or suspended uses so that importing countries must request them after reviewing information on their hazards.

Finally, the proposed legislation does not deal with the fundamental problem of the double standard. As you know, we have an elaborate regulatory system to protect our own citizens. But even when a product is finally canceled here, we still allow it to be sold to other countries which are often less prepared to deal with its hazards. Industry has two main arguments why the present situation needs no change.

First, they claim that developing countries need these canceled pesticides because of their more intractable pest problems or in order to feed a poor and growing population. But most of these chemicals are used on export crops such as cotton, coffee, not on food. Furthermore, pesticides may not be the best way to deal with the special pest problems. For example, malaria has been on the increase in many areas, precisely because of the overuse of pesticides in agriculture, resulting in mosquito resistance.

According to the Food and Agriculture Organization of the United Nations, 432 insect varieties are now resistant to one or more insecticides. For example, the diamond-back moth of South-east Asia has developed resistance to at least 11 insecticides, including members of all the major groups.

Second, industry representatives have argued that each country can control pesticide use within its own borders and thus any chemical which can legally be sold abroad should be freely exported. While ideal in theory, this view is totally unrealistic at present because most developing countries have no regulatory machinery at all and among those that do, enforcement is spotty or nonexistent.

I must tell you that our members are not only opposed to this double standard, but they are surprised and troubled to find that it exists. In addition, we are hearing from conservation groups in other countries about the problems caused by hazardous pesticides in their countries. Some of them have written to this subcommittee in June of this year, urging the elimination of our double standard and the National Wildlife Federation agrees.

Thus, for the few pesticides that are, in fact, canceled for all uses, whether voluntarily or by Agency action, we recommend that their export be prohibited. This is unlikely to injure the competitive position of the United States, certainly not for long, since the European Community is moving in this direction as well, and actions have been taken at the United Nations, the Organization of American States and among other similar international organizations.

And I have appended to my statement a copy of the resolution of the Environmental Council of the European Community which is soon to be going before the whole parliament of the European Community. That first step there requires explicit requests for all pesticides in categories which are analogous to our suspended and canceled or restricted use pesticides. Thus, we believe that the standing of the United States as a responsible trading partner and environmental leader demands that we end the double standard which threatens not only human health and ecological balance, but our own food supply.

Thank you very much, Mr. Chairman.

[The prepared statement of Ms. Bramble appears at the conclusion of the hearing.]

Mr. OLIN. I would like to thank the members of the panel. I hope you will now take questions. This is the first testimony we have had really related to the export subject. So I suspect we will have a few.

Mr. Penny.

Mr. PENNY. Mr. Chairman, I would like Mr. Sevilla to discuss in a little more detail some of the actions that are underway in Latin American nations to improve their standards and policies for the use of pesticides.

Mr. SEVILLA. As I say in my statement, the Pesticide Action Network has recommended that the Latin American countries do important work in controlling the importation of this highly toxic product. Some countries, I would say the less of them, know how dangerous these products are. For instance, in Ecuador, the regulation of pesticides law dates from 1967. And in 1967, DDT, for instance, was allowed to be used in the United States. So very little amendments have been added to that law, and that is used by the multinational companies for dumping pesticides in Ecuador, in this case.

I really believe that a great deal of work must be done by the Latin American countries for controlling the importation of this pesticide. But I believe that a joint project between governments would be much more helpful than the only work of a specific government.

Mr. PENNY. What results have occurred to date due to the passage of the U.N. resolution on pesticide distribution?

Mr. SCHEER. Can I try that one, Congressman? I think you are referring to the December 1982 U.S. General Assembly resolution on—that dealt more broadly with exports, not only of pesticides but also banned unapproved pharmaceuticals. That U.N. resolution included a restatement of this principal that exports of banned products should not go forward except with the informed consent of the importing country. It also called for the preparation of a composite list of banned products still moving in international commerce.

I would like to bring to your attention our concern about the, up to this point, reluctance of the Reagan administration to cooperate fully with the United Nations in preparing that composite list.

Ms. BRAMBLE. I might add that, as I understand it, I don't have the exact numbers of countries that have responded so far, but quite a number have. Generally, when a developing country responds they are not saying a list of things that they have at this point prohibits for use in the country, but perhaps the responses that I have seen simply reflect a desire on the part of these developing countries to have this information from the exporting countries. So it is an uneven burden at the moment. The United Nation is collecting responses.

As Mr. Scheer mentioned, the United States response so far has been basically "We have difficulties with the way the resolution is worded, and we will get back to you in more detail about our differences and difficulties with the resolution." I haven't yet seen them say that they are going to answer.

Mr. PENNY. I have no further questions.

Mr. OLIN. Mr. Gunderson.

Mr. GUNDERSON. Thank you, Mr. Chairman.

The problem we run into in so many areas when we try to regulate sales of everything from defense weapons to pesticides is the problem that simply by putting curbs on our own people, that it necessarily stops the importation of that particular product into a country. Can any of you give me any background prospective information as to what likelihood will be an opportunity for these countries to obtain these pesticides from someone else if we impose some of the regulations that are on this particular bill?

Mr. SEVILLA. I believe you can export most of these products to several other countries. It is not only that prohibition by the United States will stop dumping of this product. But I believe that being the United States the most important provider of this product, legislation that would stop exportation of this product would help a lot reducing the health dangers situation of the population at the moment.

Anyhow, as it was stated before, in Europe there is also a very important movement trying to stop the production and exportation of these highly hazardous toxic products.

Ms. BRAMBLE. The last point is very important. Progress can be made faster if the United States can show it is moving in this direction as well. But second, we have been asking whether, in fact, we would be causing an impact such that many of these pesticides would simply be manufactured in developing countries themselves, and completely out of control of any highly industrialized country that might impose a similar reduction in regulation. In fact, some of the information we have compiled shows that the actual manufacture of the active ingredient has been quite closely held by the producers, and that its formulation only that is happening in developing countries. So at least as far as the current movement in the industry, it has been almost to concentrate manufacturing of active ingredient, which is one of the major things of concern, I hear, in places where they can feel very confident about having their own control over their own secrets.

So I am not quite so worried about that as I once was. I personally was not interested in a piece of legislation that would simply move the production of this to countries in Latin America or Asia.

I think as the industry is structured now, that is not likely to happen.

Mr. GUNDERSON. Mr. Scheer, would you want to comment?

Mr. SCHEER. Not at this point.

Mr. GUNDERSON. The other question, looking at the bill, you mentioned the concern about education. You can have all the regulation in the world, if you don't educate people on the other side to the proper use, the regulations don't do much good. I don't see anything in the bill that calls for any kind of education program.

Is there something through the United Nations or some other international organization, or should there be something as part of this type of legislation? Any comments as to how we deal with that, which is probably the most important element in getting the kind of proper use we all see?

Ms. BRAMBLE. I think you are right, the bill does not deal with it. I would like to see that added. I think that the Environmental Pro-

tection Agency has been approached, for instance, by the Agency for International Development to work out a cooperative agreement for providing technical assistance in the same way that AID does with several other agencies of the U.S. Government. That has not been completed, I don't know why.

I am not going to place any responsibility anywhere about why there has been no progress in making that cooperative agreement, but I think that as far as the regulatory system is concerned, EPA could help. AID can make available through other expert programs in education and training, I would encourage that, and I would encourage that this legislation urge more emphasis in that area.

Other totally different avenues for education, however, are being suggested. I have discussed with industry people their plans for having perhaps more extensive training, at least of their distributors, which one hopes would reach the far-down users.

I am a little nervous about having promotional activities be mixed with education. I am not sure that is quite the right way to go. At least they are offering. And the other thing I have actually discussed with Mr. Sevilla is overtly saying that is going to be a thrust of U.S. policy in this area. Perhaps looking at something as drastic as colleges, some of the revenues from the sales and consolidations into a fund to pay for nongovernmental organizations in each country to undertake nationwide farmer training programs.

I think Mr. Sevilla's group would be capable of carrying that out. I would rather see it be a local activity, but at least AID could start.

Mr. SCHEER. I would like to point out one of the problems that is dealt with in Mr. Sevilla's testimony, that is that in our own country we allow the number of these pesticides under very strict kinds of conditions with protective clothing and I think we have to realize in many developing countries, at least for the foreseeable future, we can't expect to see the farmworker being in a position to be able to handle these products safely, and that is a real problem of a situation where I think in many cases U.S. manufacturers know that there is a very high likelihood that these products will be abused, they will be able to be used under the conditions which EPA has required for use in the United States, and in my view, there should be a responsibility, there is a high risk of abuse not to sell the product to someone in the first place.

Mr. GUNDERSON. Thank you, Mr. Chairman.

Mr. OLIN. Mr. Evans.

Mr. EVANS of Iowa. No questions.

Mr. OLIN. Mr. Franklin.

Mr. FRANKLIN. No questions.

Mr. OLIN. I want to thank the panel for your testimony.

Next on our list is Mr. Robert Felix, executive vice president, the National Arborist Association.

Mr. PENNY [acting chairman.] Do you have written testimony?

Mr. FELIX. It was sent on Monday.

Mr. PENNY. Can you make sure we get a copy of your written testimony before you leave today?

Mr. FELIX. Yes, sir.

Mr. PENNY. Please proceed.

**STATEMENT OF ROBERT FELIX, EXECUTIVE VICE PRESIDENT,
NATIONAL ARBORIST ASSOCIATION**

Mr. FELIX. Mr. Chairman, members of the subcommittee, I thank you for the opportunity to appear before you. My name is Robert Felix. I am executive vice president of the National Arborist Association, a trade association of urban commercial tree service firms.

I would like today to share with you our concerns about H.R. 3818. Before I do that, I would like to make one point that I ask you to take as straight from the heart and made with absolute sincerity.

We, the American people, are caught in a bind. We hear, expert versus expert, discussing pesticide risks and are asked to sort fact from fiction. We have a regulatory system authorized to protect us, the EPA. Yet, the perception grows that our trust is misplaced. We have a legislative system designed to reflect the majority will, while protecting minority rights. Yet, the protecting process can also bring grave damage to the masses.

These forces, at work in society today, concern us. Our members—arborists—protect the urban forest. Our environmental work to maintain vigorous, healthy trees returns to urban dwellers, visual, sound, and health benefits that are both physical and mental in nature.

At the same time, we are among those members of the urban public who have the highest exposure to pesticides. We care about the health and welfare of ourselves, our clients, and our clients' neighbors. If we didn't, we would be out of business.

We sincerely care about this issue because it is fundamental to our own and others' liveability. Thus, for the concerns I express about H.R. 3818, I ask that you keep our prospective in mind.

We view several parts of H.R. 3818 as highly significant in the efforts being made to assure safe pesticide use. These I will speak of today. However, please realize that our limited time precludes oral response to other issues raised in H.R. 3818 that are only marginally less significant in our minds.

First and foremost, let me address section 10 of the measure, the "private right of action" provision. Our concern is that we seem to forget the checks and balances already existing in the regulatory and legal systems when language like section 10 is proposed.

Under the Administrative Procedures Act, citizens now have a right to review FIFRA. That is clear from the rulings in *OEC v. Kunzman*, an Oregon case decided recently by the Ninth Circuit Court of Appeals. Similarly, FIFRA itself establishes an administrative procedure for redress of grievances, and, if satisfaction is not achieved, the judicial system again becomes available.

The civil laws of this Nation and its States also afford ample opportunity to seek compensation for alleged injury. The laws of nuisance and trespass have clear applicability to this kind of activity and, arguably, so too do the rules of strict liability. Obviously, certain burdens of proof must be met, but, that is, or should be, the case for administering any amount of justice.

Section 10, in our view, not only raises the probability that the regulatory system upon which we must rely will be effectively demolished; it calls into question a fundamental issue on how this

Nation's laws shall be adjudicated. That issue is whether breach of statute is, in and of itself, sufficient to gain damages. If that is the direction you choose to take, by adopting section 10, you raise the spectre that no pesticide will again be used because allegation of breach will be possible in any and every pesticide use.

No person, consciously, buys a lawsuit. Yet, for applicators, section 10 makes such a purchase unavoidable. We urge the section's removal.

Our second significant concern is about the whole question of buffer strips, prenotification, field posting, and recordkeeping. These issues are raised principally in sections 8 and 17 of H.R. 3818.

Simply put, there is an implicit assumption being made, by proposing these requirements, that no pesticide registered for use by EPA can be applied according to its label safely. In short, the language of sections 8 and 17 says to the public, "Don't trust the regulatory process."

Please remember, the current system of registration is designed to build into an approved use of a pesticide a margin of safety that not only protects the casually exposed person but the relatively highly exposed applicator.

Whether that registration system is working at its maximum potential for efficiency is, of course, another question. However, the design of the registration system is sound and does obviate the need for prenotification buffers and extraordinary paperwork.

The need for buffers and prenotification presupposes that some imminent hazard is being visited upon people that demands extreme caution. Clearly a misused pesticide can present a hazard.

However, a pesticide applied for its intended purpose, in its prescribed manner, raises no such imminent hazard. People casually, although involuntarily, exposed actually encounter such a deminimus risk that imposition of these regulations provides no benefit, only burden, on the applicator and the client.

Finally, one must remember that these proposed regulations again raise a fundamental issue. Their vagueness leaves us wondering what would finally be our regulatory burden. Of one thing we are certain: the burden of proof would be shifted fully to us as applicators.

Today if one of our client's neighbors expresses a concern, we respond by explaining our operation, its purpose, the pesticides in question, and the factors we employ to assure their safe use. We even volunteer prior notice if they ask.

These regulations would demand our doing that with all folks, whether they want it or not. An incongruity exists in this measure in that you are urging individual responsibility in section 10 but relieving that responsibility in sections 8 and 17.

We urge that responsibility for action be left with the individual, who has existing regulatory and legal means to exercise his or her rights.

Finally, let me make a quick point about the chronic testing mandates of section 4. Under H.R. 3818, chronic effects testing would include behavioral effects testing. What that is defined to mean is unknown to us but it appears to raise the lid of Pandora's box.

No substance has been tested for the range of what might easily be described as a behavioral effect. That includes vitamins, pharmaceuticals, and breakfast cereals.

It is striking to us that pesticides are being singled out to receive the special treatment. We, too, think it would be desirable to know everything about everything. However, as the answers on the relationships of pesticides to cancer, mutation, birth defects, et cetera, come in, by and large in the negative for real world users, those opposing pesticides become more and more esoteric in their criticisms and demands.

In short, the behavioral effects testing mandate appears to be nothing more than a political ploy to end pesticide availability.

In conclusion, these are some of our more significant concerns with H.R. 3818. We are committed to excellence in the pursuit of our profession. We also recognize and believe that our good work is the best insurance we have, our clients have, and the public has for safety and for the preservation of the urban environment.

H.R. 3818 does not increase that insurance coverage in an appropriate manner. Therefore, we would urge the committee to resist popular public perception, rely on the facts and strive to insure the regulatory integrity of the existing systems which, when working, assures the health, safety and liveability of, and for us all.

Thank you.

Mr. PENNY. Thank you for your testimony.

Our next witness is Mr. William Houston, and I want to call on our friend from Mississippi, Mr. Franklin, to introduce this witness.

Mr. FRANKLIN. Thank you very much, Mr. Chairman.

Bill, if you will come forward and have your seat there in the witness chair.

Ladies and gentlemen, my colleagues present, it gives me a distinct pleasure to introduce a resident of my district in Mississippi. His name is William H. Houston III.

First of all, he is a good and dear friend of mine.

Second, he has been a community leader all of his adult life in his community. He has now risen to higher planes where he serves as the chairman of the Cotton Foundation of America. He is a delegate from my area of the country to the National Cotton Foundation.

Bill Houston is a highly respected cotton farmer, cotton ginner. The people in the industry listen to him, and he knows what he is talking about, and, Bill, it is indeed a pleasure to have you with us today at this hearing.

Mr. PENNY. We all join in that welcome. We look forward to hearing your testimony.

STATEMENT OF WILLIAM H. HOUSTON III, COTTON PRODUCER DELEGATE, NATIONAL COTTON COUNCIL

Mr. HOUSTON. Thank you very much, Congressman Franklin, for those very kind comments.

Mr. Chairman and members of the subcommittee, I am William H. Houston III, of Tunica, Miss., a delegate to the National Cotton Council and chairman of the Cotton Foundation. I appear here this

afternoon both as a concerned cotton farmer and as a Cotton Council representative.

The council, as the central organization of the U.S. cotton industry, represents producers, ginner, seed crushers, warehousemen, merchants, cooperatives, and textile manufacturers from the Carolinas to California.

The cotton industry strongly supports a clean environment and safe use of chemicals. However, we are gravely concerned about the continued availability of essential pesticides that are currently registered and about the development and registration of new pesticides that are safer, more effective, and less costly.

We also are concerned about the imposition of unnecessary rules on pesticide use or application that would result in making many essential pesticides unavailable to us even though they are registered and in the marketplace.

We are especially concerned about the influence on pesticide policy by those who not only have no appreciation for the necessity and benefits of pesticides, but who also ignore experience and valid scientific evidence.

All of these concerns are magnified by provisions in H.R. 3818 that would change the basic thrust of FIFRA. They would limit the Environmental Protection Agency's ability to make fair and reasonable decisions and would effectively curtail research, development, marketing, and use of pesticides—all without adequate or sound justification.

The provision prohibiting a noncertified applicator from applying a restricted use pesticide under the supervision of a certified applicator would cause farmers undue hardships. Congress sought to avoid this when it specifically provided for such application in the Federal Environmental Pesticide Control Act of 1972.

Farmworkers who normally serve as applicators and would be required to be certified under H.R. 3818 may not always be available for applying pesticides at critical times. It is extremely critical for good husbandry that the present statute not be changed in this regard.

We strongly oppose the provision that would allow EPA to eliminate the consideration of benefits in determining whether to register a new pesticide or cancel a registration if the pesticide poses risks to humans.

No product that we are aware of is absolutely risk-free, nor can society afford to expend the resources that would be required to assure that all products reaching the market are totally without risk. Neither should EPA be denied the authority to consider benefits. To do so would put a straightjacket on pesticides.

For many years, our organization has unanimously affirmed a resolution urging registration and reregistration of vital cotton pesticides unless there is valid, scientific proof that their use presents an imminent hazard or poses risks that outweigh benefits.

The current registration provision prohibits the EPA Administrator from registering a pesticide if it generally causes unreasonable effects on the environment when used according to widespread and commonly used practices. H.R. 3818 would strike the word "generally" from this provision. We question the need for this deletion because it could eliminate EPA's discretion to consider large-

scale benefits against limited adverse environmental effects. It could also have an adverse impact on farmers and other users.

Another provision would triple the period for public comment on registration of a new pesticide and give the public a right to administrative hearing. In our opinion, this also would work to the disadvantage of farmers and other users. It could mean that registration of virtually every new pesticide would be challenged. This would delay the availability of needed new pesticides and put an additional unnecessary financial and manpower burden on both EPA and the registrants.

For similar reasons, we oppose the amendment that would permit any person, regardless of his or her interest, a public hearing on notices of intent to cancel or change the classification of a pesticide.

Rebuttable presumption against registration, commonly called RPAR, became a key part of EPA's registration and reregistration review process in 1976. Over 30 pesticides have been RPAR'ed to date, and the council filed benefit/risk statements on 10 of these important to cotton production.

But the issuance of an RPAR notice and the publicity surrounding it put a stigma on the pesticide in question. Regardless of what judgment is made after the intensive and extensive review process, the pesticide is never cleared in the eyes of the public. Our experience has been that once the pesticide has been RPAR'ed, its availability and use goes down, at least in part as a result of this stigma and the public reaction. The use of the pesticide drops significantly over the several years it frequently takes for review. And because of this drop, EPA minimizes the pesticide's benefits. This, in turn, magnifies its risk-to-benefit ratio. So it is a no-win proposition in any case.

To address this problem, Congress amended FIFRA in 1978. It prohibited EPA from initiating an RPAR unless there is a validated test or other significant evidence raising prudent concerns of unreasonable risk. We strongly support keeping this 1978 amendment and not repealing it, as would be the case with H.R. 3818.

Regarding the provision that changes the requirements for a private applicator to become certified, we believe the present requirements and certification programs are adequate and that the proposed amendment would place undue burdens on farmers in getting certified as private applicators.

We strongly oppose the addition of a private right-of-action provision to FIFRA. This would allow any person who felt aggrieved by misuse or supposed misuse of a pesticide to bring suit against farmers and ranchers.

We feel this amendment is not only unnecessary in view of the remedies given in FIFRA and other statutes but is a potential Pandora's box. Instead of enhancing protections under FIFRA, its practical effect will be simply to encourage such suits. Congress has considered similar proposals before and had the wisdom to reject them.

The proposed amendment regarding section 18 of FIFRA would unreasonably restrict the authority of EPA and the States to provide quick relief to farmers and ranchers under true emergency situations. We think this is extremely unwise and short-sighted.

It is also proposed to transfer jurisdiction regarding farmworkers and pesticides from EPA to OSHA. These two agencies argued about jurisdictional rights to establish reentry standards for pesticide-treated fields in the early 1970's. The question arose at EPA hearings on field reentry standards in 1973, when the council and other farm groups testified. We thought it was settled then once and for all.

We strongly oppose transferring any authority over the farm use of pesticides under FIFRA from EPA to OSHA. Only chaos can result from a situation where you have two regulatory agencies competing or at odds with each other. We hope and believe Congress has the foresight to see this and will reject this amendment.

We also object to the proposal to allow States to impose labeling or packaging requirements in addition to the Federal requirements under FIFRA. This would severely restrict movement of pesticides across State lines and add costs that would be passed on to farmers and other users.

We, of course, oppose careless and irresponsible handling, application, use of pesticides that would endanger the property or health of persons in and around pesticide-treated areas. We support regulations which promote their safe use and application.

But the proposed amendment to section 25 which deals with protection of persons in and around pesticide-treated areas brings up most of the issues that were brought up by the Friends of the Earth Organization in its petitions to both EPA and the Federal Aviation Administration in 1979.

Some of the restrictions they proposed vitally concerned us because they would literally have tied the farmer's hands in trying to cope with pest problems in certain situations.

Mr. Chairman, with your permission, we would like to submit for the record the comments we filed on April 9, 1980, in response to the rulemaking and policy changes those petitions proposed for aerial application of pesticides.

Finally, we wish to express our views against the imposition of registration fees. The end result would be higher pesticide costs that would be passed on to farmers and ranchers who, historically, have not been able to pass on such costs to consumers of their products. We recognize that additional per-chemical-unit costs may seem small for a pesticide product that enjoys the unusual luxury of a high-market volume over a fairly long period of time.

However, in the case of a minor-use market, a registration fee could actually be a major factor in a chemical company's decision not to seek registration. Moreover, registrants already have to bear the cost for getting a tolerance established. Since tolerances are required for registration in most cases, these fees, in a sense, constitute registration fees.

Thank you, Mr. Chairman, and members of this committee for giving us the opportunity to express our views and concerns about these provisions.

Mr. PENNY. Thank you again for your testimony.

Mr. Roberts, do you have any questions of this witness?

Mr. ROBERTS. No, sir, I do not.

Mr. PENNY. Mr. Gunderson.

Mr. GUNDERSON. No questions.

Mr. PENNY. Mr. Evans.

Mr. EVANS of Iowa. No questions.

Mr. PENNY. Mr. Franklin.

Mr. FRANKLIN. I don't have any questions. Here again, I want to thank you, Bill, for being with us and we appreciate your testimony.

Mr. HOUSTON. Thank you.

Mr. PENNY. Mr. Houston, I don't have any questions either. Your testimony is quite clear, and we appreciate your taking the time to come here today.

Mr. HOUSTON. Thank you, Mr. Chairman.

Mr. PENNY. Next is Mr. Jay Feldman, with the National Coalition Against the Misuse of Pesticides. Mr. Feldman.

**STATEMENT OF JAY FELDMAN, NATIONAL COORDINATOR,
NATIONAL COALITION AGAINST THE MISUSE OF PESTICIDES**

Mr. FELDMAN. Good afternoon. My name is Jay Feldman. I am the national coordinator of the National Coalition Against Misuse of Pesticides. I appreciate the opportunity to be here this noon.

I will depart from my prepared remarks and hope that the full text of my remarks can be made part of the record.

Mr. PENNY. We will see to it that your written remarks are included in the record.

Mr. FELDMAN. Well, you have heard a lot of information today on H.R. 3818, and what I will try and do, not to belabor any of the points, is to basically go over in a very general way what our concerns are and how we feel they will address these concerns.

The bill essentially represents an attempt from our perspective to protect both the user of pesticides and the farmer, farmworker, home gardener, and those involuntarily exposed to pesticides, such as consumers of contaminated food and water, or those exposed to pesticides through a community spray program, exposed to spray drift, from farms, forest, or rights of ways.

H.R. 3818 recognizes the pesticide problems we have heard about today and addressed in previous hearings in this subcommittee on ground water contamination, or poisoned food or homes, or problems rooted in a law that is in serious need of revision. Problems have plagued this Nation to different degrees since 1972, and we are not here to place blame on any particular administration or any particular individual, but to suggest that the problems are, in fact, rooted in a statute that is not working.

Some of the problems you have heard about today include products being marketed with faulty data, products being marketed with inadequate data, back-door registrations, that do not subject chemical products to a full review, poor enforcement of the law, exportation of the band pesticide products, and dangerous agopolistic trends in the chemical industry.

These problems we feel again result to a large degree from the statute and are not solely attributable to a management team at EPA as some have suggested. H.R. 3818 will set us on the road to correct some of these problems and quickly I will go through some of the corrections and themes we see in the bill that are important.

One is that the bill will assure more protective pesticide registration programs at EPA by closing a number of loopholes in the current law which allows safety standards to be circumvented.

Two, improved protection for humans exposed to pesticides with particular emphasis being given to those handling chemicals, those working on farms, children, and pregnant women.

Also, No. 3, the bill will assure adequate enforcements of material and legal remedies for those who have been damaged by pesticides by creating a private right of action.

No. 4, public participation will be assured on pesticide decision-making so that all the facts can be brought to bear before registration decisions are made, as well as after an application is granted.

And, No. 5, the bill will assure testing for product effectiveness to insure that a chemical performance is as the manufacturers claim, and finally, it will insure improved competition in the chemical industry by eliminating back-door registrations which extend monopoly periods and by establishing cost sharing for data submitters.

Now, having said all of that, and again these are mainly themes in the bill, and we have obviously offered our endorsement for H.R. 3818, I would like to briefly address points that have been raised in opposition to the bill, because I think it is important that the subcommittee consider these points carefully.

We see some of the points that have been raised today as in the form of myths or misinformation that is circulating around. Let me address the first myth I have heard today.

One, that H.R. 3818 will cripple EPA and State pesticide programs. Yes, H.R. 3818 does make it more difficult for the market products that have not been fully tested, for health effects, yes, the bill does attempt to assure that products canceled by EPA don't find their way back onto the market before new data is available on safety; and, yes, the bill does require that those handling the most dangerous class of restricted use pesticides be adequately trained so that the material is properly handled.

We do not believe that these actions constitute a crippling of agencies. To the contrary, we believe it will untie the hands of regulators that are interested in protecting the public and the environment.

A second myth that we have heard today is that the pending Supreme Court decision in the *Monsanto* data disclosure case precludes Congressional action on H.R. 3818 before Court action is complete.

Mr. Chairman and members of the subcommittee, you should be aware that the major issues of H.R. 3818 do not address the one central issue pending before the Court. The Court, if it intends to hear the case, will look at a small part of FIFRA section 3 data requirements, data registration, that is, and section 10, both as they specifically affect the disclosure of health and safety data and which the industry considers to be its property.

H.R. 3818 does not address this issue, however, at such time as the Court may review this issue and reserves some of these questions. We suggest the subcommittee take up this issue, in fact strengthen some of the data disclosure problems that we have addressed before this committee in the past.

Let me turn now, if I might, to some of the international concerns, but before I do that, I should raise the issue that was addressed by two previous persons, and that is open situation to the private right of action provision in our bill.

As other environmental witnesses testified earlier in the day, this private right of action provision is found in many, many other environmental statutes, including the Clean Air Act and the Clean Water Act. It would not be unique to FIFRA, and we feel it is a mechanism that could be used to divert some of the costs away from EPA and make the system operate on a pay-as-you-go, if you will, basis. If someone has a problem, they can exploit their remedies through the courts.

Now, let me move on please to international concerns as contained in H.R. 3254, the Pesticide Import and Export Act. We, as the other witnesses have testified, do support the provisions of this legislation, particularly in its area of improving communications between the United States and importing countries, especially in providing access to health and safety data used by EPA in regulating discussions on product registration.

We support the idea of the creation of an information system which provides data on what pesticide product is being supported, by whom, the nature and quantities of the material, its destination and uses, and also we support the updating of acceptable residue levels that are found on imported food to assure that the American public is not eating contaminated food.

Recognizing that H.R. 3254 represents a step forward, we are urging that the subcommittee consider additional improvements in this area, FIFRA, section 17, that hopefully would try to eliminate what many have called a double standard of public and environmental protection, one set of standards for the United States and a weaker set of standards for importing countries.

In this regard, Mr. Chairman, you, as you know, received a letter from a representative of the Latin American Pesticide Action Network back in June, having attended that Mexico meeting, and witnessed the deliberations there, I think it would be useful to quote a couple sentences from that letter in which Roque Sevilla, who testified earlier, states,

As you know, our countries are recipients of many pesticides which though produced in the United States have never been registered for use in the United States or have been canceled or highly restricted by your Government. The export of these pesticides creates serious life threatening health and environmental effects in our country. We urge you to eliminate the dangerous double standard of one set of rules for your domestic pesticide market and another for the rest of us who import U.S. pesticides.

We would be happy to work with you, Mr. Chairman, and the subcommittee to develop a system of protection that recognizes the fact that we live in one world and as a result must work with groups like PAM, Latin America and address global concerns that ultimately affect us all.

Finally, our message today is hopefully a simple and straightforward one, that is, we believe now is the time to take legislative steps to stop toxic pesticide contamination and poisoning that is apparently rampant throughout our country and slowly, but quietly, destroying the very fabric of life.

And I do want to direct your attention to the broad support that this bill has. Attached to our written comments is a list of 27 organizations, including public health, farmworker, environmental, and the like—and, finally, Mr. Chairman, we do want to applaud you in particular for cosponsoring this legislation and the leadership role you have played in promoting these important reforms that are contained in the bill.

We would also encourage all members of the subcommittee to join with you and join on this bill and help move this bill expeditiously through the legislative process.

Thank you.

[The prepared statement of Mr. Feldman appears at the conclusion of the hearing.]

Mr. BROWN. Thank you very much.

If it hasn't been already done, without objection, the full text of your statement will be included, as well as the attachment No. 1 listing the groups which support and endorse the measure before us.

Mr. FELDMAN. Thank you.

Mr. BROWN. Mr. Roberts.

Mr. ROBERTS. No questions.

Mr. BROWN. Mr. Evans.

Mr. EVANS of Iowa. No questions.

Mr. BROWN. You have been very convincing, Mr. Feldman.

Mr. FELDMAN. Thank you, sir.

Mr. BROWN. Everyone is convinced that you are right.

Mr. FELDMAN. That is a good note to end on.

Mr. BROWN. Thank you very much for your testimony.

Our next witness this afternoon is Mr. Robert M. Russell, Orkin Pest Control, from Atlanta, Ga.

I hate to tell you this, your television ads are probably the only ones that I watch.

Mr. RUSSELL. That is a distinction.

Mr. BROWN. The only pest control ads that I watch.

Mr. RUSSELL. I accept it with reservations, sir.

Mr. BROWN. We are happy to have you here this afternoon. Obviously you come from an industry that is deeply involved and acquainted with the problems in this area, so we welcome your testimony.

STATEMENT OF ROBERT M. RUSSELL, ORKIN PEST CONTROL

Mr. RUSSELL. Thank you, Mr. Chairman.

I appreciate the opportunity of being here to speak on this bill. Our company is the world's largest industrial pest control company. We employ about 5,000 people and serve over 1 million customers.

In our pest control operations, we contribute to the protection of food fiber and structure in this country. For over 80 years our company has operated with an outstanding record of safety, both to our employees and to our customers.

We support FIFRA, and we believe it has in the main accomplished as designed by Congress and as administered by EPA and

our States. We are extremely concerned that its thrust and balance of benefit-risks are seriously jeopardized by this reform act.

As a member of the National Pesticide Control Association, we are one of the 335 associations which expressed opinion and concern in our September 20, 1983 letter to the Honorable Chairman and members of the subcommittee. Of particular concern to us is the provision on page 2 of H.R. 3818, to eliminate the supervision of strict use of pesticides by certified applicators.

This major change strikes at the foundation of our industrial pest control industry. We are a relatively small industry in size, applying about 5 percent of the pesticide used in this country. Our industry is built, as most all service industries, on a competent and trained individual working on his own. This technician needs certain knowledge and physical skills. If this technician becomes certified, he will gain a certain control of his work position.

To replace him for cause, we must have available a replacement with certification credentials. Thus, our ability to supervise is lessened by the necessity of meeting this external requirement.

His supervisor, a certified applicator who is now qualified by State test, requires entirely different and much more comprehensive training and knowledge. The two functions are entirely separate. To require passage of an examination does not necessarily assure competence in a field. In our opinion, such competence is acquired through training and supervision provided by a responsible employer.

This question has been carefully reviewed by our industry. Our national association reviewed this matter in 1980, and the study which they concluded we include as an attachment to this testimony.

To attempt to combine supervision and application would dramatically damage and impact our industrial pest control industry in the following areas: control of employees, efficiency of operations, increased cost to industry, increased cost to Government and, hence, increased cost to the consuming public.

As there is no demonstrated need for this drastic realignment, we ask that this section be deleted. To force a person at one performance level to take an examination at a higher knowledge level is to us self-defeating. Most of these technicians are competent in their functions. Let us not inflict upon them an academic standard that may well place their job in jeopardy and which brings no added benefits to our industry.

An omission from this offering is, in our opinion, one of the most needed reforms. This is a question of maintaining authority to regulate pesticides at the State level. There is legislative history indicating a congressional intent that this authority would be only at the State level and not with any of its political subdivisions. This intent seems clear, but there is no expressed prohibition in the law.

During the 1980's, there have been attempts by various political subdivisions of States to become involved in the process of regulating the sale or use of pesticides. Before this problem spreads to other political subdivisions, the statute needs to be clarified to say that a State, but not a political subdivision thereof, may regulate sales or use of pesticides or require generation of data.

This limitation on some State authorities to regulate pesticides was recognized in 1980 by the attorney general of Massachusetts. Similarly, in New York, ordinances adopted by municipalities regulating pesticides have been held invalid. Further, there is an action in California reserving the right to the State.

This problem exists today and threatens to spread to other political subdivision having little understanding of the structure of the pesticide industry or the ramifications of attempted regulations. Only in exceptional cases, such as major cities, is there competent pesticide expertise below the State level.

We believe that the statute ought to reflect the congressional intent that political subdivision below the State level should not regulate the sale or use of pesticides.

The reform act seems to us to be almost a compulsion to do something now. We seriously question that this is the correct time to proceed.

When a demonstrated need on an appropriate matter is presented proving FIFRA needs adjustments, we feel sure that all interests involved will be willing to review and amend as needed.

I thank you, Mr. Chairman.

[The prepared statement of Mr. Russell appears at the conclusion of the hearing.]

Mr. BROWN. Thank you, Mr. Russell. Would you like to have the policy statement included in the record?

Mr. RUSSELL. Yes, sir, I would, both the complete text and also the attachments, if I may.

Mr. BROWN. All right, without objection, that will be included.

Do you have any questions?

Mr. ROBERTS. Since in fact the Orkin man is on record, here before this subcommittee, is there any advice you could give us as to how to rid this building of the cockroach problem we have had ever since we have had a deficit problem, and we are being about as successful at both, in trying to eradicate both pests.

Mr. RUSSELL. I don't have any direct answer.

Mr. ROBERTS. Generation after generation seems to march on with each thundering hoof step in regard to this, or whatever.

If we contracted out, do you think Orkin could get rid of the cockroaches?

Mr. RUSSELL. I believe the building is contracted out, sir.

Mr. ROBERTS. I don't mean the two-legged kind, I am talking about, six-legged.

I have no questions, Mr. Chairman.

Mr. BROWN. Mr. Evans.

Mr. EVANS of Iowa. No questions.

Mr. BROWN. Mr. Russell, your statement is well thought out, and a well rounded statement and will help us in connection with our consideration of this legislation, but I am sure you are aware that part of the pressure that is building up in the whole area of toxic chemicals stems from some well-publicized examples of the misuse of industrial pesticides, some of them were referred to this morning involving some incidents in Long Island, I have forgotten the detail of them, but I would ask you if these kinds of things are problems that give you concern.

Do you feel that they are exaggerated by the press or there are other solutions to them other than what is proposed in this legislation. How would you react if you were in our position to that kind of a situation?

Mr. RUSSELL. Well, we have been very concerned about what shows up in the press, and I think unfortunately that is just a characteristic of our country and the freedom of press that we have. Unfortunately most people like to read of sensational things or perhaps things that do have some dramatic import. The press realizes this, and they are very quick to sense and publicize these incidents.

I am sure many of them are very unfortunate, but there is no publicity about millions and millions of correct applications of pesticides that take place every day. When we say we have 1 million customers, that would mean roughly that we are making a minimum of about 13 million applications per year, and out of that, there may be some very unfortunate instances which causes a great deal of grievance and probably some extra cost. But there is nothing about the 13 million good applications of pesticides that do protect food fiber and structure.

Mr. BROWN. I understand that. We have the same problem in Congress. Every once in a while we get a case of a Congressman who gets a little press attention, and, of course, the press doesn't spend much time talking about us good Congressmen, like me and Mr. Roberts. So, we can understand that.

But, nevertheless, as we have to act with Congressmen, we have to act with regard to pesticide applicators. If there is a problem here that there is a reasonable solution to, I think the public expects us to ascertain what that solution is, and we can't get away from that by putting it off indefinitely and saying we have got to either give EPA or the administration or the industry, or whatever, time to get its act together.

There comes a time when we have to pay the penalty in doing that because we are responsible to constituencies which at appropriate times call us to order, as you may know.

I am not asserting here that we have to come up with some dramatic solution to this problem. I am just trying to get you to sympathize with the forces that are at work here and understand that we need to be looking for solutions when the problem is real, and we think it is real in the case of the widespread use of chemicals in our society today.

Mr. RUSSELL. Well, I am not trying to minimize the problem. We are very concerned about the problem; the publicity has caused us to do special things that we probably did not do previously. I just believe that to rule by the exception is probably exceptional in itself. I am sure that you, with your reference to your own governing body, don't make rules just because of the exception which causes embarrassing publicity which would hope perhaps that those incidents which are unfortunate for us would not be a guideline in making new legislation or new rules. We would hope they would be considered in the total context rather than as the exception.

Mr. BROWN. We can accept that. As a matter of fact, we had testimony before this subcommittee not too long ago in the case of cer-

tain biological testing laboratories, to the effect that, despite the scandals which had occurred with regard to some tests, that they were making very strong and reasonable efforts to upgrade the quality of work that they were doing, developing standards of professionalization and so on which we feel are very commendable and a much better solution than for us to write some amendment into the law.

But you can't get around the fact there were problems in the laboratories, just as there may be, I am not asserting that there are, problems in the application of pesticides by people in your own business.

If you feel certain in your own mind that those problems are reasonable, that they don't require legislative action, that the industry can take care of them, I want to know that. I may not necessarily agree with you, but if you have ideas about changes that you could make or we could make, that is what we are interested in getting at.

Mr. ROBERTS. In response to the press business, being a former newspaper person, and publishing and editing a small weekly, I think perhaps I could say that if someone were to write a series of five articles outlining this whole problem and going into it in depth, in perspective, being very factual, as opposed to the headlines in Long Island that resulted or that occurred as a result of the misuse of the pesticides, not many people would read those five articles, everyone in the room would probably read those articles, and then, of course, everything that is sensational, or whatever, seems to catch the public eye.

So I am not sharing the view of the journalist or newspaper person or the electronic media who seems to focus only on that, but that is just a given circumstance, and it would be up to us, and I think also industry and also those folks who are classified in the environmentalist category, to weigh all of these factors.

As I recall, the subcommittee hearing in which Mr. Downey from New York testified on this issue, the problem involved was a clear case of misuse of the chemical involved or pesticide involved where this was actually put in the vents or in the heating ducts of the vents of the homes involved, is that correct? Is my memory correct on that, or do you have any—

Mr. RUSSELL. I believe the New York incident was a case where the chemical had been applied other than in the prescribed labeled directions. I think the reference to the heating ducts was the Air Corps housing and Navy housing who had a problem in that specifically.

Mr. ROBERTS. Not only in terms of application, other than was instructed by the label, in terms of in the ground adjacent to the building, but actually in the heating ducts and air vents. How on earth could we pass a bill to prevent that in fact in terms to protect, say, the public well from misapplication?

Mr. RUSSELL. For that particular type of structure, which is a slab home with a subslab heating duct that conveys the heating system for the home, I don't believe legislation is necessary. I think many of the industry have made adjustments in their treatment. For example, we don't treat those buildings anymore with the regular termite pesticide.

Mr. ROBERTS. What was your response to the news coverage involving that kind of issue, to the extent that it did; did you go over your contingencies and up your standing operating procedure at that point and rewarn your folks to the extent of what they should be doing and should not be doing?

Mr. RUSSELL. You are speaking about the Air Corps housing?

Mr. ROBERTS. Yes, sir.

Mr. RUSSELL. We tried to get as much information as we could from the Air Corps to find out just exactly what had happened. There again, sir, we would hate to have taken just what showed in the press as being that which we should have rules from. So we tried to get as much information as we could from the Air Corps, we tried to get it through our national association, which does a good job in that respect, and we made adjustments in our treating procedures for us that a law was not required.

Mr. ROBERTS. I appreciate that.

Thank you, Mr. Chairman.

Mr. BROWN. Mr. Russell, you just have a couple of lines in your testimony with regard to what you are doing on trying to improve training and supervision, on page 2. You say your industry is now working with State officials for improved training and better supervision and that which can help to maintain and improve performance, and you want to utilize your energies in that direction.

I want to encourage that. I think that is the direction you should be going in, and if you can provide the subcommittee with additional information as to the steps that you are taking, we would like to put that in the record.

We do this in the interest of fairness. You will get enough criticism and we will criticize you enough in the subcommittee, but we also want to emphasize any positive steps that you are taking in order, if nothing else, you will just maybe take more of them, because we would like to see you do that.

Mr. RUSSELL. This is in an early stage, but I have talked with the president of the American Association of Pesticide Control Officials and have provided him with some information which I think our industry and their group could cooperate in in providing more training for our people. I will be glad to send you, the committee, the same type things that I have provided to the State officials.

Mr. BROWN. I have no further questions, Mr. Russell.

Mr. Roberts.

Mr. ROBERTS. Yes, Mr. Chairman, I apologize for the delay in the proceedings, but counsel has indicated to me, and I think the record should reflect that the incident up in Long Island in no way was connected with your company and was involved with a much smaller company, but it does bring up the point, whether it be one of our large chemical manufacturers or, say, your company, what happens, do we have enough safeguards in regard to enforcement to prevent or send a strong signal to the marginal operators—I hate to use the term “fly by night”—but that is going to, who makes use of the product, really puts your company and others who are doing their very best in terms of public safety, what can we do better to prevent that from happening?

Mr. RUSSELL. Well, I am speaking again in generalization as far as training is concerned. The thing that I talked to the president of

the APCO Association is some kind of mandatory training program. As it is now, those who are responsible will go to a social training program, and they receive some benefit thereby, some of the smaller people don't go to any training programs, and we were talking about the possibility of some five seminars which all people would have to go to.

Mr. ROBERTS. Thank you.

Mr. BROWN. All right, I think that is all that we have this afternoon. Mr. Russell, we hope we can keep in touch with you, and if there is any indication that this bill can be moved with suitable modifications, we would like to include you in the discussions of how to make it more satisfactory.

Mr. RUSSELL. Thank you very much. Again, I appreciate being here.

[Whereupon, at 4 p.m., the subcommittee was adjourned subject to the call of the chair.]

[Material submitted for inclusion in the hearing follows:]

TESTIMONY OF
JACQUELINE M. WARREN
ON BEHALF OF
NATURAL RESOURCES DEFENSE COUNCIL

I. Introduction

This is the fourth hearing before this Subcommittee this year at which a member of the Natural Resources Defense Council's legal or scientific staff has appeared to express our concerns about serious shortcomings in EPA's implementation of FIFRA and in the law itself. Each time we have urged that changes be made in the statute to remedy problems in the implementation of FIFRA that we and many other concerned citizens believe are threatening our health and the health of our children. These problems include, inter alia (1) questions about the quality of health and safety data underlying existing registrations, and about the quality of EPA's evaluation of those data; (2) the glacial pace of EPA's review of existing registrations; (3) the exclusion of the public from key decision points in the reregistration process; (4) loopholes in the registration system that systematically permit wide use of poorly screened pesticides under the guise of experimental use permits, emergency exemptions, and for questionable "special local needs", and (5) statutory obstacles to expeditious cancellation of registrations that are not supported by valid studies.

The Subcommittee now has before it in H.R.3818 a comprehensive package of amendments to FIFRA that would address these problems in a timely and effective manner. We are here today to urge you to enact the changes to FIFRA set forth in the bill.

II. Enactment Of Major Changes To FIFRA Is An Urgent Necessity

H.R. 3818 is not concerned with imaginary problems. On the contrary, it is directed at correcting well-documented abuses in EPA's administration of the pesticide registration program, many of which were described in the Subcommittee's investigative report of last December. Since that time, additional evidence has accumulated regarding lengthy delays and questionable procedures in EPA's efforts to review and restrict exposures to unquestionably hazardous pesticides, (e.g., EDB and permethrin); fraud and incompetence in the generation or review of health and safety data supporting currently registered compounds, e.g., the IBT scandal and recent findings of extensive "cut and paste" data reviews by EPA; and widespread pesticide contamination of groundwater resulting from routine agricultural activities. A majority of the 44 organic chemicals recently targeted by EPA's Office of Drinking Water as candidates for national standards under the Safe Drinking Water Act are pesticides such as aldicarb, EDB, and DBCP, that have contaminated groundwater in many areas of the country. (Att. I). As a result of these repeated disclosures, a cloud of suspicion has been cast upon much of the data underlying pesticide registrations, and upon the ability and willingness of the Office of Pesticide Programs to perform its statutory duties under FIFRA to protect the public from harm resulting from pesticide use.

The marketplace cannot protect the public against harm from involuntary exposures to pesticides in their food, water and immediate environment. In the end, the public has no choice but

to rely upon the objectivity, competence and honesty of EPA in reviewing the adequacy and validity of studies generated by the agricultural chemicals industry, which are submitted with accompanying interpretations that present the results in the most favorable light for obtaining or maintaining a registration.

EPA's implementation of FIFRA is suffering from more than a mere public relations problem. There is a crisis of public confidence in the federal pesticide program. The RPAR process, which was originally intended to expedite reregistration review of particularly suspect compounds, has deteriorated into a lengthy, essentially closed procedure that actually lengthens the time required for EPA to issue a final decision. Indeed, at a recent House Government Operations Committee hearing, Ed Johnson, the head of the Office of Pesticide Programs, acknowledged that RPAR has not worked as intended.

The original impetus for RPAR was to avoid the lengthy, cumbersome, resource-intensive but fully open adjudicatory hearings that §6 of FIFRA requires for restricting, suspending or cancelling dangerous compounds. Instead of a streamlined, open alternative process, RPAR has become procedure characterized by long delays, exclusion of the public from critical decision points, and back-room deals between EPA and the pesticide industry. If the adjudicatory hearing structure is so onerous that it must be avoided at all costs, then Congress should address that problem directly. Perhaps the hearing process should be streamlined by altering its adjudicatory character. In any event, Congress should make whatever changes are necessary to

guarantee an open process with full public participation.

Representatives of the pesticide industry have expressed strong opposition to amending FIFRA along the lines of H.R. 3818. They apparently see no problems with EPA's current implementation and have advocated either a straight reauthorization with no changes or else enactment of amendments they favor to provide even longer exclusive use of their data, prohibitions on the rights of states to do more than EPA to control dangerous pesticides, and additional restrictions on public access to pesticide health and safety data. Since the pesticide industry cannot or will not recognize the serious problems that they have helped to create and that are apparent to everyone else, their assessment of the current situation and the need for statutory changes is not deserving of great weight.

H.R. 3818 should be enacted because it would remedy many of the administrative and statutory deficiencies in the pesticide program. For example, it would:

1. establish priorities and time limits for the filling of data gaps and the reregistration or cancellation of compounds not reregistered since 1978, with particular attention to pesticides resulting in food, feed or potable groundwater residues;
2. revise the regulatory standard of FIFRA to elevate protection of human health to the highest priority;
3. open the regulatory decisionmaking process to full public participation by clarifying the standing requirements for hearings, providing for public notice

and opportunity for public comment in all regulatory and exemption proceedings, and authorizing citizens to enforce compliance with FIFRA, a right provided by all the other environmental statutes;

4. restrict the issuance of experimental use permits, emergency exemptions and special local needs registrations to circumstances genuinely warranting

exception from regular §3 registration requirements;

5. direct EPA to develop and implement a National Monitoring Plan for pesticides so that the nature and extent of pesticide exposure of humans and the environment can be ascertained;

6. raise the standard of care for commercial pesticide applicators by directing EPA to issue record-keeping and reporting requirements for applicators regarding the time, location, quantities, mixtures, application rates and equipment, and other information on commercial pesticide use; and

7. establish mandatory cancellation or revocation of tolerances as the initial penalty for submission of false, misleading or inaccurate information to EPA in support of a registration.

Conclusion

H.R. 3818 seeks to remedy deficiencies in the federal pesticide program that have existed and increased in severity over the past several years. Today our entire population is being exposed in their food, water, household air and immediate

environment to chemicals that are designed to poison and kill, and which have not been shown to be safe as currently used. It is urgent that Congress enact changes in FIFRA that will expedite the review necessary to make such a showing or remove them from the marketplace. We have had enough groundwater contamination, food chain exposure, and delay by those responsible for protecting health and the environment against the adverse effects of pesticides.

All across the country, in newspapers, state legislatures, and other committees of Congress, concerned voices are asking why these problems keep recurring and what is being done to prevent them in the future. It is time for those of you who have the responsibility and legislative authority over FIFRA and EPA's Office of Pesticide Programs to remedy the mistakes of the past and prevent similar difficulties in the future. Enacting H.R. 3818 would represent a giant step towards achieving that goal. We are counting on you to take that giant step; there is too much at stake for half-measures at this late date.

ATTACHMENT IPESTICIDES DETECTED IN POTABLE DRINKING WATER

aldicarb	chlordane
endrin	DBCP
toxaphene	lindane
dalapon	2,4-D
glyphosate	diquat
dinoseb	PCP
carbofuran	alachlor
epichlorohydrin	vydate
simazine	heptachlor
atrazine	ethylene dibromide
methoxychlor	
2,4,5-TP	
endothall	
picloram	

TESTIMONY OF RALPH ENGEL
 PRESIDENT
 CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION
 BEFORE THE
 SUBCOMMITTEE ON
 DEPARTMENT OPERATIONS, RESEARCH & FOREIGN AGRICULTURE
 COMMITTEE ON AGRICULTURE
 UNITED STATES HOUSE OF REPRESENTATIVES
 OCTOBER 6, 1983

MY NAME IS RALPH ENGEL, I AM PRESIDENT OF THE CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION (CSMA) LOCATED AT 1001 CONNECTICUT AVENUE, NW, WASHINGTON, D. C.

CSMA HAS A MEMBERSHIP OF NEARLY 400 FIRMS ENGAGED IN THE MANUFACTURE, FORMULATION, DISTRIBUTION, AND SALE OF INSECTICIDES; DISINFECTANTS AND SANITIZERS; DETERGENTS AND CLEANING COMPOUNDS; AUTOMOTIVE CHEMICALS; AND WAXES, POLISHES AND FLOOR FINISHES FOR HOUSEHOLD, INSTITUTIONAL AND INDUSTRIAL USE. A SIGNIFICANT NUMBER OF THESE PRODUCTS HAVE PESTICIDAL CLAIMS AND ARE, THEREFORE, SUBJECT TO EPA JURISDICTION PURSUANT TO THE REQUIREMENTS OF THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT (FIFRA), AS AMENDED.

SPECIFICALLY, CSMA REPRESENTS THE NONAGRICULTURAL PESTICIDE INDUSTRY, INCLUDING DISINFECTANTS AND SANITIZERS; HOME, LAWN AND GARDEN INSECTICIDES; AND A WIDE VARIETY OF OTHER INSECTICIDES FOR HOME, INDUSTRIAL AND INSTITUTIONAL USE. WE ARE HERE TODAY TO REVIEW SOME OF THE AREAS RAISED IN H.R. 3818 AND TO ADDRESS, AS WELL, SOME OF THE CONCERNS WE HAVE WITH THE EXISTING STATUTE.

WE CALL TO THE SUBCOMMITTEE'S ATTENTION A RECENT LETTER SENT BY THIRTY-THREE (33) ORGANIZATIONS TO ALL MEMBERS OF THE HOUSE AGRICULTURE COMMITTEE OPPOSING H.R. 3818. THIS JOINT LETTER POINTED OUT THAT THESE THIRTY-THREE (33) ASSOCIATIONS OPPOSE THE PROPOSED LEGISLATION

"BECAUSE THE BILL CONTAINS NUMEROUS AMENDMENTS TO THE UNDERLYING FIFRA STATUTE WHICH WOULD CHANGE THE BASIC THRUST OF FIFRA, LIMIT EPA'S ABILITY TO MAKE FAIR AND REASONABLE DECISIONS, AND EFFECTIVELY CURTAIL RESEARCH, DEVELOPMENT AND MARKETING OF PESTICIDES--ALL WITHOUT ADEQUATE JUSTIFICATION."

IN ADDITION, THE LETTER OBSERVED THAT THE "PASSAGE OF THESE AMENDMENTS TO FIFRA AT THIS TIME IS MOST CERTAINLY PREMATURE AND UNNECESSARY. THE NEW ADMINISTRATOR AND THE NEW ASSISTANT ADMINISTRATOR FOR PESTICIDES AND TOXIC SUBSTANCES SHOULD BE PERMITTED SUFFICIENT TIME TO REVIEW THE AGENCY'S PRIORITIES, AND TO REVIEW SPECIFICALLY FIFRA AND THE PESTICIDE PROGRAMS BEFORE ANY CHANGES IN THE STATUTE ARE PROPOSED."

THE SIGNATOR ASSOCIATIONS SUGGESTED THAT ". . . THE DEPARTMENT OPERATIONS, RESEARCH AND FOREIGN AGRICULTURE SUBCOMMITTEE SHOULD WAIT UNTIL THE SUPREME COURT HAS HAD AN OPPORTUNITY TO REVIEW THE CONSTITUTIONALITY OF KEY SECTIONS OF THE ACT IN MONSANTO V. EPA (E.D. MISSOURI, MAY 9, 1983) BEFORE CONSIDERING A COMPREHENSIVE REVISION OF THE BASIC FIFRA STATUTE."

IN ADDITION TO THIS JOINT LETTER, THE ASSOCIATION OF AMERICAN PESTICIDE CONTROL OFFICIALS (AAPCO) RECENTLY SENT A SEPARATE LETTER TO THE HOUSE AGRICULTURE COMMITTEE OPPOSING H.R. 3818. FURTHER, AT ITS RECENT CONVENTION IN JACKSON, MISSISSIPPI, THE NATIONAL ASSOCIATION OF STATE DEPARTMENTS OF AGRICULTURE (NASDA) ADOPTED A RESOLUTION OPPOSING H.R. 3818. "THIS LEGISLATION," NOTED THE NASDA RESOLUTION, "WOULD SERIOUSLY RESTRICT THE ABILITY OF STATES AND EPA TO APPROPRIATELY CONSIDER BOTH THE BENEFITS AND RISKS IN USING PESTICIDES, WHILE PROTECTING THE PUBLIC HEALTH AND ENVIRONMENT AND TO RESPOND IN A TIMELY MANNER TO THE NEEDS OF PESTICIDE USERS AND TO THE LEGITIMATE REQUIREMENTS OF THE

PESTICIDE INDUSTRY." IN ADDITION, IT POINTED OUT THAT "SERIOUS PROBLEMS WOULD RESULT IN MANY FIFRA PROGRAMS, INCLUDING APPLICATOR CERTIFICATION, SPECIAL LOCAL NEED REGISTRATION, EMERGENCY EXEMPTIONS, AND THE SECTION 3 REGISTRATION PROGRAMS." WE COMMEND BOTH THIS LETTER AND THIS RESOLUTION TO YOUR ATTENTION.

WE RESPECTFULLY REQUEST THAT THESE THREE DOCUMENTS, WHICH ARE ATTACHED, BE MADE PART OF THE OFFICIAL HEARING RECORD.

WE WOULD LIKE TO TAKE A FEW MOMENTS TO BRIEFLY DISCUSS A FEW OF CSMA'S CONCERNS ABOUT H.R. 3818 THAT REFLECT THE VIEWS OF OUR MEMBERSHIP.

IF H.R. 3818, THE FIFRA REFORM ACT OF 1983, WERE ENACTED, THE ENVIRONMENTAL PROTECTION AGENCY'S (EPA) ABILITY TO REGULATE PESTICIDES IN A COST-EFFECTIVE MANNER WOULD BE JEOPARDIZED. THE BILL SETS ASIDE THE BALANCE THAT CONGRESS CREATED WHEN IT PASSED THE ORIGINAL ACT, AND WOULD FURTHER RESTRICT THE MANNER IN WHICH THE EPA MAKES ITS DECISIONS.

THIS LEGISLATION WOULD PERMIT GROUPS OR INDIVIDUALS TO INTERCEDE OR CHALLENGE THOSE DECISIONS DURING THE REGULATORY PROCESS PRIOR TO ANY AGENCY ACTION, AND WOULD PERMIT DISCLOSURE OF VALUABLE INFORMATION PRIOR TO THE ISSUANCE OF A REGISTRATION. FURTHERMORE, H.R. 3818 WOULD PERMIT THESE GROUPS AND OTHERS TO TAKE THE ENFORCEMENT OF FIFRA INTO THEIR OWN HANDS BY PERMITTING THEM TO SUE THE EPA OR ANYONE ELSE THOUGHT TO BE IN VIOLATION OF THE ACT.

WE WOULD LIKE TO COMMENT ON SOME SPECIFIC PROVISIONS OF H.R. 3818 WHICH WE FEEL ARE PROBLEM AREAS.

1. THE BILL WOULD ABANDON THE HISTORIC CONGRESSIONAL BALANCE IN FIFRA REQUIRING AN ASSESSMENT OF RISKS AND BENEFITS. IF ENACTED, THE BILL WOULD PROHIBIT THE MARKETING OF ANY PESTICIDE THAT POSES ANY RISK TO HUMANS REGARDLESS OF THE BENEFITS OR NEEDS FOR THE PESTICIDE. THE ADOPTION OF THIS POSITION WOULD CLEARLY REVERSE MORE THAN A DECADE OF LEGISLATIVE HISTORY AND CONTRADICT THE VERY INTENT OF THE ACT.

2. THE BILL PROPOSES AN AMENDMENT TO FIFRA SECTION 3(6) THAT COULD RESULT IN THE ELIMINATION OF MANY PESTICIDES FROM THE MARKET, NOT FOR HEALTH AND SAFETY REASONS, BUT FOR FAILURE TO SATISFY RE-REGISTRATION TIMETABLES. UNDER THIS AMENDMENT, THE EPA WOULD HAVE FOUR MONTHS TO EXAMINE TEST PROTOCOLS, TEST RESULTS, AND AGENCY CONCLUSIONS WITH RESPECT TO EVERY TEST SUBMITTED TO THE AGENCY TO SUPPORT EVERY PRODUCT NOW REGISTERED WITH THE EPA PRIOR TO 1978 AND TO IDENTIFY "DATA GAPS" (I.E., DATA REQUIREMENTS FOR WHICH THERE ARE INSUFFICIENT CURRENT SCIENTIFICALLY VALID DATA).

THIS REVIEW WOULD INCLUDE OVER 1.5 MILLION EFFICACY STUDIES ALONE. REGISTRANTS WOULD THEN HAVE ONLY THREE YEARS AFTER FORMAL NOTICE TO FILL THESE GAPS. THE PENALTY FOR THE FAILURE OF EITHER THE EPA OR REGISTRANTS TO SATISFY THESE TIMETABLES IS AUTOMATIC EPA NOTICE OF INTENT TO SUSPEND PESTICIDES.

THIS TIMETABLE IS UNREASONABLE AND UNWORKABLE. EXISTING DATA GAPS SHOULD BE COMPLETED AS QUICKLY AS POSSIBLE, BASED ON A PRIORITIZED LIST OF CHEMICALS, AND THE ADMINISTRATOR OUGHT TO BE GIVEN THE FLEXIBILITY TO RESOLVE THESE PROBLEMS WITHIN THE REGULATORY FRAMEWORK.

3. ALTHOUGH THE 1978 FIFRA AMENDMENT (SECTION 3(c)(5)) GAVE THE ADMINISTRATOR AUTHORITY TO WAIVE SUBMISSION OF EFFICACY DATA, THE FIFRA REFORM

ACT WOULD ELIMINATE THIS PROVISION. CONSEQUENTLY, THIS "REFORM" PROVISION WOULD REIMPOSE A BURDEN ON THE EPA, INTERFERE SUBSTANTIALLY WITH THE REGISTRATION PROCESS, DIVERT THE EPA RESOURCES AWAY FROM THE EVALUATION OF HEALTH AND SAFETY TESTING, AND ACHIEVE NO MORE EFFICACY TESTING THAN IS ALREADY PERFORMED IN RESPONSE TO MARKET CONDITIONS AND COMPETITION. CURRENT FIFRA LANGUAGE DOES NOT RELIEVE MANUFACTURERS FROM EFFICACY REQUIREMENTS, ONLY FROM SUBMISSION OF SUCH DATA FOR EPA REVIEW. THE AGENCY MAY CERTAINLY REQUIRE SUBMISSION OF THE DATA FOR SUBSEQUENT REVIEW.

4. THE FIFRA REFORM ACT PROPOSES TO EXPAND THE EPA'S AUTHORITY UNDER SECTION 25(c) TO INCLUDE ESTABLISHING AND ENFORCING STANDARDS FOR "INDOOR HUMAN EXPOSURE TO PESTICIDES." THE MEANING OF THE AMENDMENT IS UNCLEAR. THE EPA ALREADY REGULATES EXPOSURE TO PESTICIDES OR MISUSE OF PESTICIDES. NO FURTHER AUTHORITY OVER "INDOOR EXPOSURE" IS NEEDED. MOREOVER, THE GRANT OF THE EPA AUTHORITY OVER EXPOSURE IN MANUFACTURING OPERATIONS AND WORK-PLACES THAT CONFLICTS WITH EXISTING OSHA AUTHORITY IS UNNECESSARY.

5. H.R. 3818 WOULD PROHIBIT CONDITIONAL OR AMENDED REGISTRATION OF PESTICIDES UNDER FIFRA SECTION 3(c)(7) THAT HAVE BEEN "CANCELLED, SUSPENDED OR VOLUNTARILY WITHDRAWN FOR HEALTH OR ENVIRONMENTAL REASONS." THE PROBLEM WITH THIS AMENDMENT IS THAT IT FOREVER BANS CERTAIN PESTICIDES FROM THE CONDITIONAL REGISTRATION PROCESS WITHOUT PERMITTING THE ADMINISTRATOR TO CONSIDER SPECIAL CIRCUMSTANCES WHEN THESE PESTICIDES SHOULD BE REGISTERED SUCH AS WHEN REASONS FOR CANCELLING OR SUSPENDING THE PESTICIDE ARE FOUND TO BE INVALID OR WHEN USE-RESTRICTIONS ARE DEVELOPED THAT WOULD PERMIT THE UTILIZATION OF SUCH PESTICIDES WITHOUT UNREASONABLE RISKS TO MAN OR THE ENVIRONMENT.

6. THE FIFRA REFORM ACT REPEALS SECTION 3(c)(8)--THE GRASSLEY-ALLEN AMENDMENT ON "RPARs." BEFORE INITIATING CANCELLATION PROCEEDINGS UNDER FIFRA SECTION 6, THE EPA MAY CONDUCT AN INTERIM ADMINISTRATIVE REVIEW (COMMONLY KNOWN AS A "REBUTTABLE PRESUMPTION AGAINST REGISTRATION" OR "RPAR" REVIEW) TO EVALUATE THE RISKS AND BENEFITS OF A REGISTERED PESTICIDE. THE INITIATION OF RPAR PROCEEDINGS IS LIKENED TO AN INDICTMENT AND MAY RESULT IN CASTING A DARK CLOUD OVER A PESTICIDE UNTIL THE RPAR IS RESOLVED, WHICH MAY TAKE YEARS.

BECAUSE OF THE ADVERSE CONSEQUENCES THAT MAY RESULT SIMPLY BY THE INITIATION OF A RPAR, CONGRESS IN 1978 ADDED SECTION 3(c)(8) TO FIFRA. SECTION 3(c)(8) PROHIBITS THE EPA FROM INITIATING A RPAR UNLESS THERE IS "A VALIDATED TEST OR OTHER SIGNIFICANT EVIDENCE RAISING PRUDENT CONCERNS OF UNREASONABLE ADVERSE RISK." THE FIFRA REFORM ACT WOULD DELETE SECTION 3(c)(8) AND PERMIT THE INITIATION OF A RPAR EVEN WHEN NO SCIENTIFIC BASIS FOR INITIATING A RPAR EXISTS.

RPARs SHOULD BE BASED ON SCIENTIFIC EVIDENCE. THE EPA HAS AMPLE MEANS UNDER FIFRA, WITHOUT RESORTING TO RPAR PROCEDURES, FOR ACQUIRING INFORMATION IT NEEDS TO DETERMINE WHETHER A PESTICIDE SHOULD BE CANCELLED.

7. UNDER A NEW SECTION 3(h), THE FIFRA REFORM ACT PROPOSES TO REQUIRE TESTS ON INERT INGREDIENTS IN PESTICIDE PRODUCT FORMULATIONS "TO DETERMINE IF THE INGREDIENT MAY CAUSE AN UNREASONABLE ADVERSE EFFECT ON MAN OR THE ENVIRONMENT." THIS UNREASONABLE EXTENSION OF FIFRA WILL ENORMOUSLY INCREASE THE COSTS AND WORKLOAD ON THE EPA AND REGISTRANTS. THE AMENDMENT HAS THE POTENTIAL OF REQUIRING TESTS ON INERT INGREDIENTS THAT ARE NOT BIOLOGICALLY ACTIVE OR HAVE BEEN PROVEN SAFE IN USAGE. IN ADDITION, THE FIFRA REFORM ACT WOULD REQUIRE THAT THE NAME OF EACH INERT INGREDIENT BE LISTED ON THE LABEL. THIS AMENDMENT IS UNNECESSARY AND INCONSISTENT

WITH THE INTENT OF FIFRA.

8. CURRENTLY, FIFRA SECTION 24(b) PROHIBITS STATES FROM IMPOSING LABELING OR PACKAGING REQUIREMENTS IN ADDITION TO OR DIFFERENT FROM THOSE REQUIRED UNDER FIFRA. THE FIFRA REFORM ACT WOULD ESTABLISH AN EXCEPTION TO THIS PROHIBITION AND PERMIT STATES TO REQUIRE LABELING TO IDENTIFY USES OF THE PRODUCT THAT ARE PROHIBITED WITHIN THE STATE.

THE BURDEN IMPOSED IN INTERSTATE COMMERCE AND UPON MANUFACTURERS BY SUCH A PROVISION IS UNREASONABLE. ADDITIONALLY, THE ENFORCEMENT OF THIS PROVISION WOULD BE EXTREMELY DIFFICULT. PESTICIDES FREQUENTLY CHANGE HANDS BETWEEN VARIOUS MANUFACTURERS, DISTRIBUTORS, AND CONSUMERS AND MAY END UP NOT BEING APPLIED IN THE SAME STATE IN WHICH THEY ARE SOLD. ACCORDINGLY, THESE PESTICIDES MAY BE LABELED TO BE IN ACCORD WITH THE LAW OF ONE STATE, BUT MAY END UP BEING APPLIED IN ANOTHER. THE EXPENSE OF COMPLYING WITH POTENTIALLY DIFFERENT LABELING REQUIREMENTS, THEREFORE, WOULD NOT BE JUSTIFIED. CONGRESS, BY VIRTUE OF THE PRESENT PROHIBITION ON STATE LABELING REQUIREMENTS FOR FEDERALLY REGISTERED PRODUCTS, HAS ALREADY CONSIDERED THIS ISSUE AND HAS DECIDED TO EXPLICITLY PROHIBIT ITS ENACTMENT. THE CURRENT §24(b) FIFRA PROHIBITION SHOULD THEREFORE BE LEFT INTACT.

9. THE PROPOSED AMENDMENTS TO SECTIONS 18 AND 24(c) WOULD ALMOST COMPLETELY CURTAIL THE ABILITY OF THE EPA AND THE STATES TO RESPOND TO LOCAL EMERGENCIES AND SPECIAL LOCAL NEEDS BY REQUIRING PUBLIC NOTICE AND COMMENT PERIODS TO PRECEDE MOST DECISIONS TO GRANT EMERGENCY EXEMPTIONS AND BY IMPOSING A 90-DAY HIATUS PERIOD ON EVERY REQUEST FOR A SECTION 24(c) REGISTRATION.

10. THE EPA'S ABILITY TO PERMIT FLEXIBILITY AS TO THE RESEARCH AND

TEST DATA WHICH SHOULD BE GENERATED TO SUPPORT REGISTRATION APPLICATIONS WOULD BE RESTRICTED. THE EPA WOULD HAVE AUTHORITY TO WAIVE OR VARY DATA REQUIREMENTS ONLY UNDER VERY LIMITED CIRCUMSTANCES, EVEN THOUGH THE WAIVER OF REQUIREMENTS IN SOME CIRCUMSTANCES MAY SAVE REGISTRANTS FROM PERFORMING AND THE EPA FROM REVIEWING NEEDLESS BUT EXTREMELY COSTLY TESTING. THIS PROVISION FLIES IN THE FACE OF CURRENT FIFRA §25(A)(1) WHICH MANDATES THE ADMINISTRATOR TO CONSIDER DIFFERENCES BETWEEN AGRICULTURAL AND NONAGRICULTURAL PESTICIDES IN ISSUING REGULATIONS UNDER THE ACT.

11. CURRENTLY, FIFRA SECTION 3(c)(5) PROHIBITS THE ADMINISTRATOR FROM REGISTERING A PESTICIDE IF IT "GENERALLY" CAUSES UNREASONABLE ADVERSE EFFECTS TO THE ENVIRONMENT WHEN USED ACCORDING TO WIDESPREAD AND COMMONLY RECOGNIZED PRACTICES. SECTION 6 WOULD PERMIT THE ADMINISTRATOR TO INITIATE CANCELLATION PROCEEDINGS UNDER THE SAME STANDARD.

THE FIFRA REFORM ACT WOULD ELIMINATE THE TERM "GENERALLY" FROM SECTIONS 3(c)(5) AND (6). THE USEFULNESS OF THIS PROPOSAL IS QUESTIONABLE, HOWEVER, SINCE THE EPA DOES CONSIDER ADVERSE EFFECTS ON SPECIFIC POPULATIONS WHEN DETERMINING WHETHER TO REGISTER OR CANCEL A PRODUCT. FOR EXAMPLE, THE EPA CONSIDERS WHETHER A PESTICIDE AFFECTS CERTAIN SPECIES OF WILDLIFE THAT MAY EXIST ONLY IN CERTAIN REGIONS OF THE COUNTRY. THE TERM "GENERALLY" MERELY PROVIDES THE ADMINISTRATOR THE FLEXIBILITY TO ADDRESS SITUATIONS IN WHICH ADVERSE EFFECTS ARE SO MINIMAL OR SPECIFIC TO SUCH A SMALL GROUP THAT THE PESTICIDE SHOULD BE REGISTERED DESPITE ITS ADVERSE EFFECTS. THE ADMINISTRATOR NEEDS THE FLEXIBILITY HE IS GIVEN UNDER FIFRA TO DETERMINE WHETHER TO REGISTER OR CANCEL A PRODUCT BY DETERMINING WHETHER IT GENERALLY CAUSES UNREASONABLE ADVERSE EFFECTS.

12. THIS PROPOSED LEGISLATION RAISES A SIGNIFICANT NUMBER OF QUESTIONS CONCERNING PUBLIC PARTICIPATION IN THE REGISTRATION PROCESS. IF THE BILL WERE ENACTED, IT WOULD REQUIRE THE EPA TO MAKE DATA SUBMITTED WITH REGISTRATION APPLICATIONS AND OTHER "RELEVANT" SCIENTIFIC INFORMATION PUBLICLY AVAILABLE BEFORE A REGISTRATION DECISION IS MADE. THE PROVISION IS TOTALLY ILLOGICAL SINCE IT WOULD REVEAL A MANUFACTURER'S MARKETING PLAN WHILE DATA REMAINS WITHIN EPA (AFTER LONG PERIODS) AWAITING REGISTRATION. SINCE THE PRODUCT CANNOT BE MARKETING WITHOUT A REGISTRATION, THERE IS ABSOLUTELY NO VALID REASON FOR DISCLOSURE.

THESE PROVISIONS WOULD PLACE REGISTRATION APPLICANTS AT A COMPETITIVE DISADVANTAGE BY REQUIRING PUBLIC DISCLOSURE OF SENSITIVE DATA EVEN BEFORE A REGISTRATION DECISION IS MADE. IT SHOULD BE NOTED THAT CONGRESS REJECTED A SIMILAR PROPOSAL FOR THE SAME REASONS WHEN IT AMENDED FIFRA IN 1972.

THE FIFRA REFORM ACT AMENDMENTS WOULD NOT ONLY EXTEND THE COMMENT PERIOD THAT PRECEDES THE REGISTRATION OF A NEW CHEMICAL FROM 30 TO 90 DAYS, IT WOULD ALSO GIVE INTERESTED PERSONS A RIGHT TO AN ADMINISTRATIVE HEARING FOLLOWING A DECISION TO GRANT A REGISTRATION UNDER SECTION 3(c)(5). THIS CHANGE WOULD ASSURE THAT MANY PESTICIDE REGISTRATIONS WOULD BE CONTESTED. THE BILL WOULD MAKE THE REGISTRATION OF ONE PRODUCT SO BURDENSOME ON THE EPA THAT SUBSTANTIAL ADMINISTRATIVE RESOURCES WOULD HAVE TO BE DEVOTED TO SETTLING DISPUTES OVER REGISTRATIONS, NO MATTER HOW INSIGNIFICANT OR UNJUSTIFIED.

THE BILL ALSO PROPOSES AMENDMENTS TO THE CONDITIONAL REGISTRATION PROCESS, SECTION 3(c)(7), THAT WOULD MAKE DATA SUBMITTED TO SUPPORT

A REGISTRATION APPLICATION PUBLIC IMMEDIATELY AFTER ITS SUBMISSION TO THE EPA AND THAT WOULD REQUIRE THE ESTABLISHMENT AND PUBLICATION OF TIME-TABLES FOR THE SATISFACTION OF DATA REQUIREMENTS NOT YET SATISFIED.

13. UPON REQUEST, THE EPA WOULD HAVE TO DISCLOSE DATA SUBMITTED TO SUPPORT A REGISTRATION APPLICATION BEFORE THE REGISTRATION IS GRANTED. BY REMOVING RESTRICTIONS ON THE RELEASE OF SUCH DATA TO FOREIGN OR MULTI-NATIONAL COMPETITORS, THE BILL WOULD PERMIT THE RELEASE OF A REGISTRANT'S HIGHLY SENSITIVE AND COMPETITIVE INFORMATION TO ITS FOREIGN COMPETITORS EVEN BEFORE ITS REGISTRATION IS APPROVED.

14. THE FIFRA REFORM ACT WOULD REQUIRE THE EPA ADMINISTRATOR TO ESTABLISH A SYSTEM OF REGISTRATION FEES THAT WOULD, IN EFFECT, RESULT IN TAXING A FEW TO FINANCE A REGULATORY SYSTEM THAT BENEFITS MANY. UNDER CURRENT LAW, GOVERNMENT FEES ARE AUTHORIZED ONLY WHEN SPECIFIC SERVICES OF SOME VALUE ARE RENDERED TO SPECIAL BENEFICIARIES (31 U.S.C. § 483A). WHEN GOVERNMENT SERVICES BENEFIT SOCIETY GENERALLY, THE EXPENSE OF THOSE SERVICES MUST BE BORNE BY THE TAXPAYERS AT LARGE, NOT BY INDIVIDUALS (SEE SENATE COMMITTEE ON EXPENDITURES IN THE EXECUTIVE BRANCH, FEES FOR SPECIAL SERVICES, S. REP. NO. 2120 81ST CONG. 2D SESS. 3 (1950)). THE PRIMARY PURPOSE FOR REQUIRING THE REGISTRATION OF PESTICIDES IS TO PROTECT PUBLIC HEALTH AND SAFETY. THUS, THE EPA REGISTRATION PROCESS IS FOR THE PUBLIC BENEFIT AND PROPERLY SHOULD BE PAID WITH PUBLIC FUNDS, NOT WITH SPECIAL FEES.

WE AT CSMA STRONGLY OPPOSE THE ADOPTION OF REGISTRATION FEES, AND WE SPECIFICALLY REFERENCE OUR EXTENSIVE TESTIMONY BEFORE THIS SUBCOMMITTEE ON APRIL 6, 1983.

15. THE SECTION 10 PROVISIONS CALLING FOR A PRIVATE RIGHT OF ACTION (§16 OF THE STATUTE) PROVIDES THAT "A PERSON MAY COMMENCE A CIVIL ACTION FOR DAMAGES OR EQUITABLE RELIEF OR BOTH--AGAINST A PERSON . . . WHO IS ALLEGED TO BE IN VIOLATION OF THIS ACT." SUCH AN AMENDMENT HAS GREAT POTENTIAL FOR ABUSE. IT COULD HALT THE APPLICATION OF PESTICIDES AND ENABLE A PLAINTIFF TO COLLECT DAMAGES, INCLUDING COURT COSTS AND WITNESS FEES, RESULTING FROM EVEN MINOR VIOLATIONS.

THIS AMENDMENT IS UNNECESSARY BECAUSE REMEDIES ALREADY EXIST UNDER STATE LAW AND FIFRA ENFORCEMENT PROCEDURES EXIST TO STOP PESTICIDE MISUSE WHEN IT OCCURS. IN VIRTUALLY ALL STATES, CITIZENS CAN ALREADY BRING SUIT IN STATE COURT FOR INJUNCTIVE RELIEF AND DAMAGES. SINCE ALMOST ALL STATES HAVE STATUTES DEFINING PESTICIDE USE VIOLATIONS, CITIZENS MAY BRING SUIT TO ENFORCE THEIR OWN STATE LAWS AND THEREFORE DO NOT NEED A NEW FEDERAL RIGHT TO SUE.

IN ADDITION TO ENFORCING STATE PESTICIDE STATUTES, CITIZENS ALSO HAVE THE RIGHT TO BRING SUIT UNDER STATE TORT LAW FOR MANY ACTIONS WHICH WOULD CONSTITUTE PESTICIDE USE VIOLATIONS. IN VIRTUALLY ALL STATES, USE OF A PESTICIDE IN VIOLATION OF GOVERNMENT LAWS AND REGULATIONS WOULD BE STRONG EVIDENCE OF NEGLIGENCE. WHERE AN INDIVIDUAL CAN SHOW THAT HE IS ENTITLED TO EQUITABLE RELIEF, VIRTUALLY EVERY STATE ALLOWS ITS CITIZENS TO OBTAIN INJUNCTIONS AGAINST SUCH UNLAWFUL OR NEGLIGENT ACTS.

ALTHOUGH WE HAVE SERIOUS PROBLEMS WITH MANY OF THE PROVISIONS OF H.R. 3818, WE WELCOME AN OPPORTUNITY TO WORK WITH MEMBERS OF THE SUBCOMMITTEE REGARDING THIS PROPOSED LEGISLATION IN THE HOPE THAT WE CAN RESOLVE SOME OF OUR DIFFICULTIES.

WE BELIEVE, HOWEVER, THAT MANY OF THE UNDERLYING CONCERNS THAT ARE EXPRESSED IN H.R. 3818 CAN BE RESOLVED BY ADMINISTRATIVE ACTIONS WITHIN THE REGULATORY PROCESS AND DO NOT REQUIRE MAKING SUBSTANTIVE CHANGES IN THE EXISTING STATUTE. WE HOPE TO WORK WITH THE AGENCY TO ADDRESS A NUMBER OF THESE CONCERNS.

WE ARE EQUALLY CONCERNED, HOWEVER, THAT H.R. 3818 DOES NOT ADDRESS MANY OTHER PRESSING PROBLEMS WITH FIFRA, SOME OF WHICH WE DISCUSSED DURING OUR TESTIMONY ON APRIL 6, 1983. WE WOULD LIKE TO TAKE A FEW MOMENTS TO TOUCH ON SOME OF OUR CONCERNS.

1. DEVELOPMENT OF FIFRA REGISTRATION DATA GUIDELINES -- CSMA HAS IN THE PAST EXPRESSED SERIOUS CONCERN OVER THE DEVELOPMENT AND IMPLEMENTATION OF GUIDELINES WHICH ARE INTENDED BY CONGRESS TO SET FORTH THE KINDS OF DATA WHICH WOULD BE REQUIRED TO SUPPORT A REGISTRATION.

THE CONGRESSIONAL INTENT BEHIND SECTION 3(c)(2) OF FIFRA IS TO SPECIFY GENERALLY THE KINDS OF BASIC DATA OR INFORMATION WHICH MAY BE REQUIRED TO SUPPORT A REGISTRATION, BUT AT THE SAME TIME PERMIT LATITUDE AND FLEXIBILITY ON THE PART OF SCIENTISTS IN DEVELOPING THEIR DATA.

DURING THE 97TH CONGRESS, CSMA WORKED WITH EPA, MEMBERS OF CONGRESS, AND OTHER INTERESTED PARTIES TO ACHIEVE SOME LEGISLATIVE CHANGES TO FIFRA, SECTION 3, TO CORRECT THE GUIDELINES PROBLEMS. LEGISLATIVE LANGUAGE PROVIDING FOR PUBLICATION OF FLEXIBLE GUIDELINES AND MODIFICATIONS IN THE FEDERAL REGISTER AND FOR SUBMISSION OF PUBLIC COMMENT FOR AGENCY GUIDANCE WAS ADOPTED BY THE HOUSE WHEN IT PASSED H.R. 5203 ON AUGUST 11, 1982.

WHILE THE EPA HAS MOVED A LONG WAY IN ADDRESSING THIS PROBLEM, WE BELIEVE THAT THE FIFRA STATUTE SHOULD APPROPRIATELY ADDRESS THIS ISSUE, SO AS TO REFLECT CONGRESSIONAL INTENT SIMILAR TO THAT EXPRESSED DURING THE LAST CONGRESS.

2. DISTINCTION BETWEEN AGRICULTURAL AND NONAGRICULTURAL PESTICIDES -- CONGRESS ADDED A NEW REQUIREMENT TO FIFRA IN 1978 TO THE EFFECT THAT REGULATIONS PRESCRIBED BY THE ADMINISTRATOR TO CARRY OUT THE ACT MUST TAKE INTO ACCOUNT THE DIFFERENCE IN CONCEPT AND USAGE BETWEEN VARIOUS CLASSES OF PESTICIDES AND DIFFERENCES IN ENVIRONMENTAL RISK, AND THE APPROPRIATE DATA FOR EVALUATING SUCH RISK, BETWEEN AGRICULTURAL AND NONAGRICULTURAL PESTICIDES. THIS AMENDMENT EXTENDED THE PROVISION IN THE EXISTING LAW WHICH REQUIRED THE ADMINISTRATOR TO TAKE INTO ACCOUNT THE DIFFERENCE IN CONCEPT AND USAGE BETWEEN VARIOUS CLASSES OF PESTICIDES, BY MANDATING THE ADMINISTRATOR TO APPLY SUCH DISTINCTION IN PRESCRIBING AND EVALUATING DATA FOR NONAGRICULTURAL PESTICIDES.

THE AGENCY HAS NOT, IN FACT, YET FULLY IMPLEMENTED THIS CONGRESSIONAL DIRECTIVE. WE RESPECTFULLY URGE THIS SUBCOMMITTEE TO PROVIDE SPECIFIC LANGUAGE DIRECTING THE EPA TO SEPARATE OUT AND UTILIZE CURRENT ADMINISTRATIVE STAFF TO SPECIFICALLY ADMINISTER ANY REGULATIONS AND GUIDELINES WHICH PERTAIN TO THE NONAGRICULTURAL PORTION OF THE PESTICIDE INDUSTRY.

3. STATE POLITICAL SUBDIVISIONS UNDER SECTION 24(A) -- WE WOULD LIKE TO FOCUS ON ONLY ONE SEGMENT OF §24(A) DEALING WITH WHETHER OR NOT POLITICAL SUBDIVISIONS OF A STATE, SUCH AS A COUNTY OR TOWNSHIP, SHOULD BE ABLE TO EXERCISE THE SAME PESTICIDE JURISDICTION AS A STATE.

DURING THE 1980s, THERE HAVE BEEN ATTEMPTS BY VARIOUS POLITICAL SUBDIVISIONS OF STATES, SUCH AS CITIES AND TOWNSHIPS, TO GET INVOLVED IN THE PROCESS OF REGULATING THE SALE OR USE OF PESTICIDES OR REQUESTING GENERATION OF DATA.

BEFORE THIS PROBLEM SPREADS TO OTHER STATES, AND THEIR POLITICAL SUBDIVISIONS, THE STATUTE SHOULD BE CLARIFIED TO SAY THAT "A STATE, BUT NOT POLITICAL SUBDIVISIONS THEREOF, MAY REGULATE SALE OR USE OF PESTICIDES OR REQUIRE GENERATION OF DATA." WHILE THERE IS LEGISLATIVE HISTORY CLEARLY INDICATING A CONGRESSIONAL INTENT IN THIS REGARD, THE STATUTE CONTAINS NO EXPRESS PROHIBITION.

WE BELIEVE THAT THE STATUTE OUGHT TO REFLECT THE CONGRESSIONAL INTENT THAT POLITICAL SUBDIVISIONS BELOW THE STATE LEVEL SHOULD NOT REGULATE THE SALE OR USE OF PESTICIDES.

4. EPA SHOULD MAINTAIN A BIOLOGICAL TESTING FACILITY AT BELTSVILLE, MARYLAND -- SENATOR PAUL SARBANES (D, MD) HAS INTRODUCED S. 780, A BILL TO REQUIRE THAT THE EPA MAINTAIN A FACILITY FOR THE BIOLOGICAL TESTING OF PESTICIDES UNDER FIFRA. WE SUPPORT LANGUAGE SIMILAR TO THIS BILL.

WE BELIEVE IT IS APPROPRIATE TO HAVE ONE FEDERAL LABORATORY FACILITY THAT HAS THE AUTHORITY TO PROVIDE TESTING OF DISINFECTANT MATERIALS AND THUS AVOID CONFLICTS OVER TESTING METHODS AND TEST RESULTS.

WITHOUT SUCH A LABORATORY WE FORESEE THE POSSIBILITY OF NUMEROUS STATES OBTAINING VARYING TEST RESULTS ON THE SAME PRODUCT AND THEREBY TAKING DIFFERENT ENFORCEMENT ACTIONS. EVEN WITH ONLY THREE STATES CURRENTLY CONDUCTING THE TESTS, NAMELY FLORIDA, NORTH CAROLINA AND VIRGINIA, THERE IS EARLY EVIDENCE OF DIFFERING TEST RESULTS BETWEEN THEM;

INSTANCES WHERE ONE STATE WOULD FAIL A PRODUCT AGAINST A TEST ORGANISM WHILE ANOTHER STATE WOULD OBTAIN PASSING RESULTS.

MULTIPLY THAT EXAMPLE BY HUNDREDS OF PRODUCTS AND YOU CAN SEE THE CONFUSION THAT WOULD RESULT.

5. TRADE SECRETS -- MANY STATES DO NOT HAVE PROVISIONS COVERING THE DISCLOSURE OF CONFIDENTIAL, PROPRIETARY, OR TRADE SECRET BUSINESS INFORMATION. THERE ARE NO PROVISIONS IN THE EXISTING STATUTE TO DEAL WITH THIS PROBLEM.

CONFIDENTIAL TRADE SECRET INFORMATION SUBMITTED TO THE EPA, BUT LATER FORWARDED TO A STATE OR UTILIZED TO REGISTER A PRODUCT AT THE STATE LEVEL, MAY NOT BE PROTECTED FROM DISCLOSURE OR MAY BE INADVERTENTLY DISCLOSED BY THE STATE. ALTHOUGH THERE IS AN ATTEMPT TO PROTECT FEDERAL TRADE SECRET MATERIALS UNDER SECTION 10 OF FIFRA, THERE NEEDS TO BE EVEN STRONGER PROTECTION AT THE STATE LEVEL. INDIVIDUALS, ORGANIZATIONS OR COMPANIES SHOULD NOT BE ABLE TO CIRCUMVENT THE TRADE SECRET PROVISIONS OF FEDERAL FIFRA BY SECURING THE SAME DATA AT THE STATE LEVEL.

6. EPA INTERIM REGISTRATION PROCEDURES -- IN PR NOTICES 83-4 AND 83-4A DATED JUNE 16 AND JUNE 23, 1983, RESPECTIVELY, EPA SET FORTH INTERIM REGISTRATION PROCEDURES ADVISING REGISTRANTS OF THE METHODS BY WHICH REGISTRATIONS MAY BE OBTAINED. THESE PR NOTICES WERE OCCASIONED BY DECISIONS RENDERED IN THE NACA v. EPA DECISION (NO. 79-2063, D.D.C. JANUARY 20, 1983). SUBSEQUENTLY, THE DECISION IN THE MONSANTO LITIGATION (MONSANTO v. ACTING ADMINISTRATOR, NO. 79-366C(1), E.D. MO., MAY 9, 1983) TERMINATED THE USE OF THE CITE-ALL METHOD OF OBTAINING REGISTRATION. THUS, REGISTRANTS ARE LEFT ONLY WITH THE PR NOTICES AS A MEANS OF OBTAINING REGISTRATION.

THESE PR NOTICES PERMIT A REGISTRANT TO GAIN REGISTRATION BY:

- A) PERFORMING THE TESTING OR CITING HIS OWN DATA;
- B) OBTAINING THE PERMISSION OF ALL SIMILAR DATA OWNERS; OR
- C) USING THE FORMULATOR'S EXEMPTION PROVIDED IN §3(c)(2)(D).

WHILE THESE PROCEDURES HAVE PERMITTED SOME BASIC (MANUFACTURING USE) MANUFACTURERS AND END-USE FORMULATORS TO GAIN REGISTRATION, IT LEAVES ONE SEGMENT OF THE PESTICIDE INDUSTRY WITH EXTREME DIFFICULTY IN ACHIEVING ANY FEDERAL REGISTRATIONS. THIS GROUP OF COMPANIES CAN BE CLASSIFIED AS FIRMS THAT OBTAIN MANUFACTURING USE CHEMICALS AND COMBINE THEM INTO AN INTERMEDIATE FOR SUBSEQUENT SALE TO FORMULATORS. EPA DOES NOT ENVISION THESE MANUFACTURERS AS COMING WITHIN THE FORMULATOR'S EXEMPTION. CONSEQUENTLY, THEY MUST EITHER DO THEIR OWN TESTING ON THE BASIC INGREDIENT, WHICH IS FINANCIALLY IMPOSSIBLE FOR MOST, OR OBTAIN PERMISSION OF ALL SIMILAR COMPANIES HAVING DATA WHICH IS NEARLY IMPOSSIBLE BECAUSE THESE FIRMS ARE IN COMPETITION WITH EACH OTHER. WE BELIEVE THAT SOME LANGUAGE NEEDS TO BE ADDED TO FIFRA TO ENSURE THAT THESE FIRMS ARE TREATED EQUITABLY WITH RESPECT TO REGISTRATION.

UNFORTUNATELY, H.R. 3818 DOES NOT ADDRESS ITSELF TO ANY OF THESE IMPORTANT ISSUES. WE HOPE, HOWEVER, THAT THE SUBCOMMITTEE WILL ADDRESS THESE CONCERNS AT THE APPROPRIATE TIME.

CONCLUSION

WE WELCOME THIS OPPORTUNITY TO OFFER OUR TESTIMONY INCLUDING THOSE COMMENTS REFERRING TO H.R. 3818, AND APPLAUD THE SUBCOMMITTEE'S LONG-STANDING CONCERN AND HARD WORK ON THE FIFRA STATUTE.

WE FULLY REALIZE THAT THERE ARE A NUMBER OF COMPLEX FIFRA ISSUES

THAT NEED TO BE DISCUSSED, AND THAT THIS PROCESS WILL BE TIME-CONSUMING CERTAINLY, WE WOULD LIKE TO ASSIST IN ANY WAY WE CAN TO FULLY DISCUSS THESE IMPORTANT CONCERNS AND TRY TO HELP RESOLVE SOME OF THEM.

WITHIN A SHORT TIME, WE WILL KNOW IF THE U. S. SUPREME COURT WILL TAKE UP THE MONSANTO V. EPA CASE. IF THE SUPREME COURT CONSIDERS THIS CASE, IT WILL BE MONTHS BEFORE A DECISION IS RENDERED, PERHAPS BY THE SPRING OF 1984. SINCE THIS DECISION WILL LIKELY HAVE A SIGNIFICANT IMPACT ON FIFRA, IT SEEMS PREMATURE TO DEAL WITH THESE MEASURES UNTIL THE U. S. SUPREME COURT HAS DETERMINED ITS COURSE OF ACTION.

ADDITIONALLY, DUE TO THE SIGNIFICANCE OF H.R. 3818 AND ITS IMPACT ON THE STATUTE, AS WELL AS OTHER CONCERNS RAISED BY OTHER WITNESSES TODAY, WE RESPECTFULLY URGE THE SUBCOMMITTEE TO CONSIDER HOLDING HEARINGS ON FIFRA-RELATED MATTERS NEXT SPRING. WE WOULD, OF COURSE, WELCOME AN OPPORTUNITY TO PARTICIPATE IN FURTHER DELIBERATIONS ON THIS MATTER AT THE APPROPRIATE TIME.

WE SHARE A COMMON CONCERN THAT ALL PESTICIDES, WHETHER USED NATIONALLY OR CENTERED LARGELY WITHIN A PARTICULAR STATE, ARE SAFE AND EFFECTIVE FOR THEIR INTENDED USES AND THAT THEY DO NOT POSE UNREASONABLE RISKS TO MAN AND HIS ENVIRONMENT. MANY OF THE CONCERNS WE HAVE NOTED IN OUR FULL TEXT TODAY IMPOSE AN ECONOMIC BURDEN UPON OUR INDUSTRY AND DEPRIVE CONSUMERS OF SAFE AND EFFECTIVE PESTICIDES NEEDED TO CONTROL PESTS WHICH DISRUPT OUR ECONOMY AND REDUCE THE QUALITY OF OUR LIVES. CSMA IS COMMITTED TO WORK WITH THIS SUBCOMMITTEE TO RESOLVE THESE IMPORTANT CONCERNS.

THANK YOU.

EXHIBIT 1

September 20, 1983

The Honorable George E. Brown, Jr.
U. S. House of Representatives
2256 Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Brown:

The undersigned organizations and their membership oppose H.R. 3818, as an amendment to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). We are opposed to H.R. 3818 because the bill contains numerous amendments to the underlying FIFRA statute which would change the basic thrust of FIFRA, limit EPA's ability to make fair and reasonable decisions, and effectively curtail research, development and marketing of pesticides--all without adequate justification.

Passage of these amendments to FIFRA at this time is most certainly premature and unnecessary. The new Administrator and the new Assistant Administrator for Pesticides and Toxic Substances should be permitted sufficient time to review the Agency's priorities, and to review specifically FIFRA and the pesticide programs before any changes in the statute are proposed.

Additionally, the Department Operations, Research and Foreign Agriculture subcommittee should wait until the Supreme Court has had an opportunity to review the constitutionality of key sections of the Act in Monsanto v. EPA (E.D. Missouri, May 9, 1983) before undertaking a comprehensive revision of the basic FIFRA statute.

We take exception to H.R. 3818 for a number of important reasons, some of which are noted. Some of us may be in contact with you concerning our specific concerns and objections to the bill.

All of us share a common concern that all pesticides, whether used nationally or within a particular state, are safe and effective for their intended use and that they do not pose unreasonable risks to man and his environment. We look forward to working with the subcommittee and full Agriculture Committee on these important matters.

Sincerely,

American Association of Nurserymen

American Pulpwood Association

American Seed Trade Association
 American Soybean Association
 American Wood Preservers Institute
 Chamber of Commerce of the USA
 Chemical Specialties Manufacturers Association
 Farm & Industrial Equipment Institute
 Interior Plantscape Association
 International Apple Institute
 International Sanitary Supply Association
~~Professional~~
 Lawn Care Association of America
 National Agricultural Aviation Association
 National Agricultural Chemicals Association
 National Arborist Association
 National Association of Wheat Growers
 National Cattlemen's Association
 National Club Association
 National Corn Growers Association
 National Cotton Council of America
 National Council of Agricultural Employees
 National Council of Farmer Cooperatives
 National Fertilizer Solutions Association
 National Food Processors Association
 National Forest Products Association
 National Pest Control Association, Inc.
 Pesticide Producers Association
 Society of American Florists
 Society of American Wood Preservers, Inc.
 Southern Agricultural Chemical Association
 United Fresh Fruit & Vegetable Association
 U. S. Beet Sugar Association
 Western Agricultural Chemicals Association

EXHIBIT 2



ASSOCIATION OF AMERICAN PESTICIDE CONTROL OFFICIALS, INC.

P. O. Box 5207
Mississippi State, MS 39762
September 16, 1983

OFFICERS

Robert McCarty
President
L. O. Nelson
President Elect
Harry K. Rust
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The Honorable George E. Brown, Jr.
U.S. House of Representatives
Committee on Agriculture
Department Operations, Research, and Foreign Agriculture Subcommittee
Room 301
Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Brown:

The American Association of Pesticide Control Officials opposes H.R. 3818, as an amendment to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The association opposes H.R. 3818 because the amendments would make major changes in the current FIFRA that would curtail the ability of the Environmental Protection Agency and states to administer an effective pesticide regulatory program. If H.R. 3818 is adopted, the EPA and states would not be able to make fair and reasonable decisions in a timely manner, research would be affected thus reducing development and marketing of pesticides. Pesticide applicator certification programs that are currently effective would be changed to the point they could not be satisfactorily administered and they would not be any more effective than they are at present if the amendments are adopted.

We consider adoption of these amendments untimely, premature and unnecessary. EPA administrative personnel are responding to the needs for regulating pesticides in an appropriate manner under the existing FIFRA. In recent weeks, a new Administrator and new Assistant Administrator for Pesticides and Toxic Substances have been appointed and they should be given sufficient time to review the agency's priorities, and to review specifically FIFRA and the pesticide programs before any changes in the statute are proposed.

Some of the reasons why we oppose adoption of the FIFRA Reform Act have been stated and our association will welcome an opportunity to work with your committee on specific details of the legislation.

AAPCO is dedicated to pesticides being used in a safe and effective manner and we believe they should not pose unreasonable risks to man and his environment. It is our contention that pesticides can be adequately regulated at the federal and state levels under the existing statute. We are willing to work with your Subcommittee and the full Agriculture Committee on this important legislation.

Very truly yours,

Robert McCarty
Robert McCarty
AAPCO President

RHM/jg

EXHIBIT 3

SUBJECT OF RESOLUTION FIFRA LEGISLATIONORIGIN OF RESOLUTION P.I. COMMITTEEDATE OF ORIGIN SEPTEMBER 19, 1983

The existing provisions of the Federal Insecticide, Fungicide and Rodenticide Act are workable and recent changes in the administration of EPA should further improve the ability of EPA and the states to proceed with technically sound and practical regulatory programs and obviate the necessity of any major overhaul of this statute.

However, Federal legislation (H.R. 3818 and S. 1774) has been introduced which would make drastic changes in the thrust of FIFRA. This legislation would seriously restrict the ability of states and EPA to appropriately consider both the benefits and risks in using pesticides, while protecting the public health and environment and to respond in a timely manner to the needs of pesticide users and to the legitimate requirements of the pesticide industry. Serious problems would result in many FIFRA programs, including applicator certification, special local need registrations, emergency exemptions, and the Section 3 registration programs.

RESOLVED, that the National Association of State Departments of Agriculture, meeting in Jackson, Mississippi on September 21, 1983, strongly opposes H.R. 3818 and S. 1774 as introduced in the U. S. Congress.

ACTION TAKEN BY NASDA STANDING COMMITTEE APPROVEDACTION TAKEN BY NASDA RESOLUTION COMMITTEE APPROVEDACTION TAKEN BY NASDA 



National Audubon Society

NATIONAL CAPITAL OFFICE
645 PENNSYLVANIA AVENUE, S.E., WASHINGTON, D.C. 20003 (202) 547-9009

Testimony

of

Maureen K. Hinkle

National Audubon Society

645 Pennsylvania Avenue, S.E.

Washington, D.C. 20003

202-547-9009

on

H.R. 3818

the Federal Insecticide Fungicide and Rodenticide Reform Act (FIFRA)

Hearings before the

House Agriculture Committee

Subcommittee on Department Oversight Research, and Foreign Agriculture

October 6, 1983

AMERICANS COMMITTED TO CONSERVATION
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The National Audubon Society is pleased to have this opportunity to testify on H.R. 3818, the Federal Insecticide Fungicide and Rodenticide Reform Act (FIFRRA), and H.R. 3254, the Pesticide Import and Export Act of 1983. My testimony will focus on H.R. 3818. Accompanying me today is Edith Meacham, who is in charge of Audubon's international program. She will give our testimony on H.R. 3254 at the end of my presentation.

Your investigative report, presented to the subcommittee on December 16, 1982 documented the serious failings of the Office of Pesticide Programs in the most comprehensive report since the Kennedy volumes of 1976. Your report, as with the earlier Kennedy investigation, identified problems that apparently are larger than even EPA suspected. The cut and paste evaluations were not in fact "rare," but more widespread in part as agency personnel sought to meet the clear-the-deck goals of the Burford Administration. (Audubon's view of the resource and budget cuts resulting in the cut and paste jobs were detailed in our April 6, 1983 testimony before this committee.)

We do not intend to repeat testimony given to this subcommittee previously this year or before the Senate Agriculture subcommittee on May 24th. We believe the time to enact an environmentally acceptable pesticide law is now. H.R. 3818 contains needed reform language, essential to protect the health and safety of the public -- consumers, farmers, users as well as our soil, water and our global commons.

H.R. 3818 would increase public input into the regulatory process, increase the testing requirements for registration, encourage, rather than discourage, data development, reduce human exposure, close existing loopholes, provide for minimum legal recourse, provide for registration fees to pay for regulation, provide employee protection, and monitor for pesticides that travel from where applied and persist despite official label precautions. All these measures are intended, in the words of the late Judge Leventhal, "to stimulate the bureaucratic being."

Before discussing individual sections of H.R. 3818, Audubon would like to underscore the need for this legislation by going back two decades to point out that the same problems plaguing the pesticide program in 1964 and 1969 have had a striking rebirth in 1981 and 1983.

Nearly 20 years ago (May 1964), FIFRA was amended to eliminate protest registration and make it clear that the burden of establishing the safety of a pesticide product must be met by the applicant before it could be registered. The 1964 Miller amendment was the congressional response to public concern about the hazards of pesticides which arose after publication of Silent Spring in 1962. The purpose of the amendment was specifically to grant the administrative officer charged with enforcement of FIFRA more effective procedures by which to protect the public by removing from the channels of interstate commerce any economic poison whose safety or effectiveness was open to substantial doubt.

(H.R. Rep. No. 1125, 88th Cong., 2d Sess. (1964)). This amendment was intended to end "protest" registration over objections by government bodies, and to provide a mechanism whereby the Secretary of Agriculture could refuse to register a pesticide, or could cancel or suspend existing registrations.

The House Committee on Government Operations published a report on Deficiencies in Administration of Federal Insecticide, Fungicide, and Rodenticide Act on November 13, 1969. (H.R. Rep. No. 91-637, 91st Cong., 1st Sess. (1969)). That report detailed the inaction by the USDA office of General Counsel, and failure to pursue contested cancellation actions. Cancellations that occurred after the 1964 amendments consisted of noncontroversial label changes, fully agreed to or even initiated by the registrant. Hearings that were requested were suspended indefinitely with the product remaining on the market. USDA's registration division (PRD) assumed the burden of proof to prove the product was not safe before a registration could be cancelled. Moreover, the PRD assumed it would be "discriminatory" to refuse to accept new uses of a product suspected of being dangerous, as long as existing registrations were legal.

That sorry record and policy reversal resulted in the transfer of pesticide regulation from USDA to EPA in 1970. In 1971 EPA's first Administrator, William Ruckelshaus, affirmed the regulatory responsibility of proceeding upon a substantial question of safety of a pesticide registration.

. . . It is clear from the statute, the legislative history, and judicial construction that the burden of establishing the safety and effectiveness of a product remains with the registrant from the time of initial application through continued registration of the product. [emphasis supplied]

Recognition of the burden of proof is crucial to an understanding of the cancellation process. Judicial interpretations have emphasized that this initial step in the administrative process of deregistration is triggered whenever the Administrator determines from all the data before him that there is a substantial question as to the safety of a product. Issuance of a notice of cancellation is appropriate whenever it is decided that it appears that the registrant has failed to discharge his continuing burden of proof that the product meets the statutory standards including those pertaining to safety and efficiency. (sic.) Environmental Defense Fund, Inc. v. Ruckelshaus. supra, Slip op. at 14.*/ [emphasis supplied]

After this 1971 statement, the Leventhal (Chlordane Heptachlor) decision (April 4, 1975), 510 F. 2d 1298 (D.C. Cir. 1975), ruled that "substantial evidence" means "something less than the weight of the evidence. It [is] enough at this stage that the administrative record contain[s] respectable scientific authority supporting the Administrator."

Despite Audubon's written and oral reminders of the Leventhal standard, EPA in 1979 firmly ignored this standard, and established a policy of relying on "weight of evidence" for

*/ Reasons Underlying the Registration Decisions Concerning Product Containing DDT, 2,4,5-T, Aldrin and Dieldrin. EPA. Transmitted from William Ruckelshaus to Clifford Hardin March 18, 1971.

evaluating all RPAR chemicals.

Ever since 1979 EPA has relied upon this revisionist interpretation of burden of proof and standard of evidence.

The convenience of the regulator is the basis for this policy pursuit. As RPAR's bogged down after years of intensive review, the agency found that mass review of problem pesticides caught too many chemicals. To take action on those chemicals triggering chronic toxicity criteria meant regulatory action so broad as to remove from the market place, or cast doubt on the safety of, too many high use chemicals. Thus, EPA resurrected the old standard of weight of evidence. Action was then limited to cancellation of only minor, out of date uses, or those that would not be appealed or contested by registrants. If not contested by registrants, EPA did not have to worry about lengthy adjudicatory hearings, since the public (both users and consumers/environmentalists) could not participate.

Data gaps, and the fraudulent IBT tests, brought to public attention by the Kennedy Committee provided a convenient regulatory morass in which to drop the RPAR. Dropping RPARs into the registration network, risk chemicals could be lost in data gaps, incomplete literature searches, and ever changing risk calculations.

The 1983 EPA has, as its predecessor agency, USDA did, assumed the burden of proof of the safety of registered pesticides. As recently as last Friday, September 30, in its explanation of the

EDB suspension decision, EPA admitted that it will not act until it knows it can "win" its case against a chemical. This flies in the face of the Bazelon decision which intended the opposite:

Public hearings bring the public into the decision-making process, and create a record that facilitates judicial review. If hearings are held only after the Secretary is convinced beyond a doubt that cancellation is necessary, then they will be held too seldom and too late in the process to serve either of these functions effectively. (439 F. 2d. at 595)

The cancellation and suspension decisions of the last year: toxaphene (October 15, 1982) and EDB (September 30, 1983), were delayed until overwhelming evidence, incensed press and media coverage, critical congressional investigations and even specific legislation. Industry does not easily yield a market, however deteriorating. Therefore, EPA's reliance on voluntary and/or quiet compliance cannot result in orderly regulation.

The H.R. 3818 reform legislation will bring some order into the current regulatory chaos.

Reasonable time period provided for data gaps to be filled

John Quarles, Deputy Assistant Administrator of the EPA in 1975, testified before Senator Kennedy that the IBT fraudulent studies were not a surprise because the administrative law hearings had surfaced misinterpreted slides in the Aldrin/Dieldrin hearings and studies that had been deliberately withheld in the Chlordane/Heptachlor case. It was the magnitude of the IBT studies that was the surprise.

In addition to the fraudulent studies by at least one company, there is the slippage in data. Eighty percent of pesticides currently on the market lack chronic effects data. Data gaps are routinely allowed unless EPA sends formal data call-in letters to registrants. EPA delays issuance of such data call-ins, putting off regulatory action indefinitely. H.R. 3818 would shorten this inexplicable delay in registration activity.

In addition, the public should have an opportunity to track and monitor "replacement" studies so that EPA cannot minimize the magnitude of "deficient" studies.

Improved test requirements

In 1962 Rachel Carson caused a tidal wave of criticism against pesticides by writing, "we have allowed these chemicals to be used with little or no advance investigation of their effect on soil, water, wildlife, and man himself." A decade after, Administrator Ruckelshaus wrote, ". . . scientific analysis of [long term genetic, behavioral or synergistic effects of certain economic poisons alone or in concert] is still in a primitive state and the extensive testing necessary has not been undertaken. Rectification of this omission in the available data is a matter of utmost concern to this Agency. Development of adequate testing protocols and facilities is a priority undertaking." (Reasons, at 10-11) Accordingly the 1972 FIFRA mandated premarket testing.

The 1981 Burford administration changed previous policy and ignored congressional intent announcing at a public hearing on July 7, 1982 its intention to negotiate with the registrant which tests will be required. Since no public record of such negotiation is required, the conduct of test studies and their design and protocols becomes an underground art.

The individual burden born by the use of pesticides includes our blood and fat tissues, the water we drink, the food we eat. The economic costs include public funds necessary to regulate, inspect, monitor, and analyze residues and commerce of pesticides. Since the public has a stake in the regulation of pesticides, the public should be involved in the design of protocols which should be required, with any waiver a matter of public notice and comment through the petition process. H.R. 3818 would reaffirm the 1972 mandated requirement.

Close existing loopholes

The emergency exemption provision of FIFRA has been so abused that EPA is in a regulatory bind as to how to tighten this loophole without the time consumptive rulemaking process. Prompt legislation would remedy this problem more quickly than the administrative process. Your Subcommittee Report documented the extensive abuse of this broad discretionary authority.

Audubon had to sue EPA twice for granting unnecessary emergency permits for dangerous pesticides. In 1979 Audubon success-

fully obtained a TRO against "emergency" use of toxaphene for grasshoppers in North Dakota. In 1982-83 we obtained a TRO for an emergency permit for ferriamicide (mirex) against fire ants in Mississippi. A grass roots group in South Carolina had to obtain a TRO against "emergency" use of DBCP on peach trees in 1982.

H.R. 3818 would tighten up the basis for approval of emergency exemptions, would prevent routine renewals, and most importantly, would require notice and comment prior to approvals. In crisis situations, the notice and comment requirement would not apply for obvious reasons.

Similarly, FIFRA's provision for special local needs would be improved by H.R. 3818 to prevent circumvention of the more stringent Sec. 3 registration requirements. An important addition that would help the states would require state agencies to inform EPA of those registrations not used, or lapsed, so that EPA's records accurately reflect the numbers and the registrations.

Public input into the regulatory process

Citizen input is provided in other major federal environmental laws as a means to enhance the administration and enforcement of those statutes. Public participation would help to restore credibility to a sorely discredited program in FIFRA.

The 1972 FIFRA provided for public disclosure of information submitted by registrants in support of their registration

30 days after registration. No data was disclosed to the public, however, because all data was designated as confidential business information by registrants.

H.R. 3818 would make registration data disclosable, subject to the restrictions of Sec. 10, prior to granting registrations or establishing tolerances, during the period the Administrator is evaluating the application. After the fact comments are not as useful as those that can play a basic part in the agency registration decision.

Legitimate legal challenge from public groups or members of the public

H.R. 3818 provides for citizen input, legitimate environmental challenges from the public, and a private right of action. These provisions are eminently fair and equitable, yet these provisions are strenuously opposed by the regulated companies. H.R. 3818 simply removes barriers to full participation by non-registrants of pesticides to request and participate in an evidentiary hearing on cancellation of a pesticide registration. The issue is a matter of fairness. Under current law and court interpretation of it formal hearings are afforded to a registrant who contests a proposed cancellation, but environmental groups may participate only in those hearings on which EPA proceeds, and cannot ask for more restrictions than does EPA. Since EPA only proceeds when its case is uncontestable, or nearly so, proceedings are rare. H.R. 3818 would simply correct the handicap now

place on environmental groups.

Similarly a private right of action would enable citizens to bring suit for damages as a remedy for injury suffered by reason of violation of FIFRA. Without a specific provision, a private right is not implicit. Nuisance suits would be precluded, and appropriate relief would be made available to individual citizens.

Indemnification for suspended pesticides

Sec. 15 of FIFRA provides for indemnity payments to registrants for products that have been suspended. This provision provoked one of the stormiest debates in Congress in 1972. The Republican administration had two consistent and strong objections to the legislative package moving through Congress in 1971. These objections centered on the 3(c)(1)(D) data compensation and indemnification provisions. It was argued by the administration and by the Senate (which rejected the indemnification provision) that stocks should be considered an ordinary risk of business, and economic hardship, to the extent it exists, can be compensated with the pricing structure. In conference, the House provision for indemnity payments as a price for voluntary suspensions was retained.

Until 1983 the indemnities provision was invoked for a handful of minor cases amounting to less than \$3 million. In June, however, \$12,880,842 was awarded to Chevron Chemical Company for

existing stocks of silvex. At the time of EPA's 1979 suspension of silvex for home use, Chevron agreed not to contest the suspension in return for indemnities. The Court of Claims awarded the automatic appropriation of funds based on the conditions met for Sec. 15 of FIFRA.

The precedential aspect of the nearly \$13 million indemnity payment needs to be emphasized for a fiscally minded congress. It is no longer a matter of whether or not a registrant can be paid off, it is how much can he get?

The U.S. Government should not be required to compensate companies for stocks of substances which have been profitably marketed for several decades, and whose risks have been well documented and known for years. H.R. 3818 would prevent this unwarranted raid on the U.S. Treasury.

Efficacy testing

Audubon's testimony on efficacy testing was discussed in our February 23 testimony (at 5) and April 6 testimony (at 9-11). We would like to urge this subcommittee to incorporate in H.R. 3818 the substance of S. 780, an amendment introduced by Senator Sarbanes on March 11, 1983. That amendment would restore EPA's operation at the Beltsville Laboratory. This independent governmental laboratory served as a check on claims made by registrants, and its operation was, and is, supported by many state officials. Its cost is a mere \$600,000. (Compare this cost to the monitoring costs of endrin for one state in 1971: \$450,000.) In pure

and simple terms, it is irresponsible to use the market place to determine whether or not pesticides work.

30-day advance warning ,

Congress enacted Sec. 25(B) of FIFRA to require that the Secretary of Agriculture be provided with a copy of proposed final regulations 30 days before a regulation can be signed for publication in the Federal Register. This provision has worked to sound an early warning system to every conceivable interested party to reverse the pending regulation by relentless pressure up to and including the White House. With such unrestrained and vested interest opposition, the EPA and the public are at a clear disadvantage. To prevent the endless delays and unnecessary politicizing of the regulatory process, this provision should be struck.

Conclusion

H.R. 3818 contains many other necessary and constructive provisions that do not need specific discussion by Audubon at this time. It is not a perfect package. H.R. 3818 could be improved by encouraging alternative pest control strategies^{*/} and forcing new technology.^{**/} Indoor exposure from pesticides has received

^{*/} Crop rotation would solve some "emergency" situations. The economic return of rotation is not a viable alternative per se, however, if the risk of the use of soil fumigants and the potential for groundwater contamination were considered, the rotation incentive would be stronger.

^{**/} Technology forcing would occur as risk of certain uses is identified and uses phased out. If a market is anticipated, private industry would know that it had a certain number of years in which to research and develop a viable (and safe) alternative. As long as EPA condones and accepts risk, there is no incentive to develop safer alternatives.

little attention, and indeed either due to ignorance or deliberate policy changes within EPA, short residuals are no longer to be the standard for indoor or food areas. Another problem is groundwater contamination from pesticides which is increasing, and is not regulated in a preventive way.

Nevertheless, what is needed at this point is a firm congressional directive to depoliticize pesticide regulation, to correct some of the legacy of the Gorsuch-Todhunter regime. H.R. 3818 is a positive signal for EPA, and it is critical to restore a measure of public confidence in the pesticide program.

Audubon is pleased to be asked to testify today. As the record indicates, Audubon participated in the legislative battle prior to the 1972 amendments, and provided for monitoring implementation of the 1972 FIFRA. Because of this consistent involvement with pesticides legislation and administration, I would be pleased to answer any questions you have about past, present or future legislation regarding pesticides.

Thank you.



National Audubon Society

NATIONAL CAPITAL OFFICE
645 PENNSYLVANIA AVENUE, S.E., WASHINGTON, D.C. 20003 (202) 547-9009

Testimony

of

Edith D. Meacham

National Audubon Society

645 Pennsylvania Avenue, S.E.

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on

H.R.3254

The Pesticide Import and Export Act of 1983

Hearings before the

House Agriculture Committee

Subcommittee on Department Oversight Research, and Foreign Agriculture

October 6, 1983

The National Audubon Society appreciates this opportunity to testify before this Committee on H.R. 3254, the Pesticide Import and Export Act of 1983. Our half million members have expressed a great deal of concern about United States export policies and it is our hope that these policies will change in the near future so that American consumers are protected from banned pesticides in their food and pesticides are used around the world in a more beneficial way.

The export of pesticides banned in the United States has been justified in the past in many ways. It is argued that some pesticides, while too dangerous to be useful in the United States, are necessary in other parts of the world to control vector diseases or to increase yields so that ever-increasing populations may be fed. Yet as early as 1971, Mr. Ruckelshaus, then Administrator of EPA, stated in a policy paper that "this Agency will not permit the triumphs of public health achieved in the past to be a continuing justification for use of a particular substance in the future".^{*/} On June 9, the Department Oversight, Research and Foreign Agriculture Committee held hearings on U.S. export controls and is therefore well aware of the problems caused by misuse of pesticides in lesser developed nations. With this awareness in mind, it is time to apply Mr. Ruckelshaus's words to United States export policy and end the double standard under which it operates.

^{*/} Reasons Underlying the Registration Decisions Concerning Product Containing DDT, 2,4,5-T, Aldrin and Dieldrin. EPA, Transmitted From William Ruckelshaus to Clifford Hardin, March 18, 1971.

The 1978 amendments to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), which placed some controls on pesticide exports were preliminary steps towards solving some of the problems related to the export of hazardous substances. But these laws do not go far enough. Loopholes in the notification system prevent it from fulfilling its purpose. United States chemical companies can go through the notification process with a subsidiary in an importing country and by the time the government of that country is informed, the shipment is already on its way. The Pesticide Import and Export Bill of 1983 (H.R. 3254) would tighten this loophole as well as several others and make U.S. regulation of pesticide exports more effective.

Section 3(a) of the bill gives the importing country's government a much more active part in the notification system. The importing government would be required to place a formal request for any regulated pesticide before the sale took place. This addition will help countries without a fully developed internal regulatory structure control what substances enter the country. The bill further tightens existing legislation by adding several categories of pesticides to those which currently require notification. The additions include:

- a) Pesticides which are restricted to use by trained, certified applicators;
- b) those which are "acutely toxic" as defined in the bill, and;
- c) those which have been voluntarily withdrawn from the market by the registrant.

The benefits of including these products are many. A majority of pesticide applicators in the Third World are untrained and use inadequate protective equipment and therefore are often over-exposed to toxic chemicals. If

importing governments are aware of use restrictions and chemical toxicity levels, they will be better able to protect farm workers. Many companies voluntarily withdraw chemicals from the market because they are unable to support the product's registration in the face of EPA cancellation proceedings. A voluntary withdrawal usually means that there are major problems with a chemical's health and safety data. For example, in 1982, Nitrofen (TOX), an herbicide used on rice, was temporarily withdrawn from the market. A 1980 Canadian laboratory study determined that nitrofen caused cancer and birth malformations, and in 1982, Science Magazine (Science 215: 293-294) published a study on the teratogenic effect of nitrofen which determined that the chemical caused mice to be born without heads. EPA has been negotiating with the registrant for several years during which time, as well as after "voluntary" cancellation, the product is legally exported without notification.

Benzene hexachloride (BHC), an organochlorine insecticide, was also voluntarily cancelled after numerous studies showed it to be a potent oncogen. BHC is still marketed abroad and residues of the chemical frequently show up on imported products. Recently, the FDA found residues of BHC from 0.1 p.p.m. to 0.23 p.p.m. in rabbit meat imported from the People's Republic of China. U.S. consumers, while protected from BHC and other chemicals at home, are exposed to them in the foods imported by the United States. Because U.S. chemical companies are not required to reveal their export information, the Food and Drug Administration must rely on guesswork in its attempt to prevent contaminated food from entering the United States. Sections 2(a) and (b) would require chemical companies to provide data on where their products were shipped, how much was shipped and what crops they were being used on. These additions would help the FDA locate contaminated products and better protect the American consumer.

Section 5 would also protect the consumer by removing "tolerance levels" left in place by the EPA. Tolerance levels, legally acceptable levels of pesticide residues on a food product, are still in place for chemicals such as DDT, aldrin/dieldrin and EHC. The reason given for the high tolerance levels is the chemicals' persistence in the environment but these levels have remained the same as when the chemicals were widely used for agricultural purposes in the United States. One exception is DDT, which was banned for agricultural uses in 1972. Its tolerance levels were only recently reduced from 7 p.p.m. to 5 p.p.m. The American consumer is inadequately protected from pesticide residues on imported products as long as such tolerances remain in place.

Leadership in this area is a first step towards ensuring effective and long-term use of chemicals globally. We have seen the consequences of chemical misuse due to ignorance: it is now up to producing countries to decide whether to continue to take advantage of this ignorance or try to encourage a more reasonable and effective use of chemicals throughout the world. The Pesticide Import and Export Act of 1983 is a legislative necessity if the United States is to begin to address the problem of double standards in its export policies.

I like to submit for the record an article I wrote for Audubon Action, a quarterly newspaper which goes out to all our members. I think it will demonstrate the strong feelings which our members have concerning this issue.

Thank you for this opportunity to testify. We will be happy to answer any questions you may have.

Statement of Jim Walesby
 Chairman, Farm Chemicals Committee
 National Association of Wheat Growers

Before the
 Subcommittee on Department Operations Research and Foreign Agriculture
 Committee on Agriculture
 U.S. House of Representatives
 on
 The FIFRA Reform Act
 October 6, 1983

Mr. Chairman and Members of the Subcommittee:

The National Association of Wheat Growers appreciates this opportunity to present its views on H.R. 3818, the FIFRA Reform Act. I am Jim Walesby, Chairman of NAWG's Farm Chemicals Committee, and a wheat producer from Almira, Washington.

Pesticides are essential to efficient wheat production. The NAWG favors government regulation of pesticide products, but regulation that is designed only to provide proper guidance and tools for resolving recurring pest problems. Such regulation should encourage, and not discourage, research and development of improved products and application techniques, while allowing the farmer to use the products confidently in accordance with registered directions. Those who rely on pesticide products to guarantee an abundant food supply should be protected from threats of unnecessary litigation and roadblocks purposely erected to severely limit or completely eliminate the use of pesticides.

We favor tough requirements for registration and use and we favor removal of products from the market which are found to not meet current standards. We believe the current FIFRA basically provides these guidelines, if properly administered. Any modifications should improve, and not obstruct the registration process or the correct usage of chemical products. In our opinion, however, many of the provisions of H.R. 3818 would create greater complexity, more controversy, and increased litigation in this regard. In addition, we fear that the legislation would weaken, and possibly destroy, the research commitment vital to providing better tools for pest control.

Section 3 of H.R. 3818 modifies Section 2 of FIFRA and proposes a new definition of "active ingredient." Currently the definition of the active ingredient in a pesticide formulation is the ingredient responsible for the pest control activity. These active ingredients are subject to extensive and exhaustive testing prior to acceptance for use. Reclassifying non-active inert ingredients as active will confuse the issue, further complicate registration and use and not contribute significantly to the public safety. In addition, these inert products are already regulated by EPA. No product can be used as an inert ingredient in a pesticide formulation unless it appears on EPA's approved list and has passed required EPA testing. Requiring these inerts to be tested as active ingredients would be a tremendous waste of resources.

Section 3 also proposes to prohibit application of restricted use products by farm workers operating under the supervision of a certified applicator. Such a prohibition will create an unnecessary hardship on the individual farmer who can and does properly supervise his employees in various farm operations, including application of chemicals. If the responsibility for proper application

is diverted from the farm owner or field manager to the farm laborer, then proper application can be expected to be reduced. Many farm workers can operate equipment properly and accurately under responsible supervision, but could not qualify as certified pesticide applicators. Requiring all such farm hands to become certified is simply not practical.

Section 4 of the proposed bill modifies the activity and authority of the EPA Administrator regarding registration. The proposed changes governing data requirements limit the Administrator's authority to make common sense decisions. If EPA is to be given the responsibility of registering and regulating pesticides Congress should not attempt to set forth in rigid detail how this should be done. This can only result in poor administration of the Act.

Further, to require the Administrator to provide for public notice and comment whenever a waiver or variance of data requirements is considered for a specific registration is an unnecessary and time-consuming burden on the Administrator and will discourage efficient evaluation of the new product. We as users of pesticides believe it is proper and desirable to allow EPA professionals to judge the facts of any case without unnecessary delay, or obstructionist intervention that becomes inevitable when the general public is invited to participate in this kind of technical decision. Current law adequately insures public participation in pesticide regulation without this amendment.

Section 4 of the bill also deletes current authority for the Administrator to waive efficacy requirements for agricultural pesticides. In 1978 Congress added this provision to the Act and gave the Administrator the option to waive submission of efficacy data in order to allow agency resources to be more sharply focused on other aspects of the registration. It should be recognized that products have been and still are intensively tested by industry, state and federal experiment stations to determine their usefulness. It is a waste of resources for EPA to attempt to re-evaluate such tests except in special cases where their review is deemed pertinent to the issue. The efficacy of agricultural pesticides is better determined by agricultural experts and the market place than by EPA.

Section 4 also provides for modification of the registration process to give any person the right to an administrative hearing to challenge a decision by EPA to grant a specific registration. This will certainly result in many challenges by professional anti-pesticide groups, simply to delay, and hopefully sidetrack, the registration process. EPA must be allowed to exercise its authority to grant a final registration without undue interference.

Section 4 also deletes the Grassley-Allen Amendment which was attached to the FIFRA in 1978. This amendment required EPA to have validated evidence to support any action to suspend or cancel a pesticide or restrict its uses. This was added to prevent the loss of products through unfounded action initiated by invalid claims against the product, and we believe the provision should be retained. If a product is in fact producing significant adverse effects its continued use should be re-evaluated. But action should be based only on well substantiated claims, and thorough scientific investigation of risks and benefits of the product.

Section 4 would require extensive re-registrations of products approved for use before 1972. This requirement would pose an impossible task for manufacturers, and many safe and useful products would be jeopardized because of lack of time and resources to complete the re-registration process before

the legal deadlines. EPA has proceeded with the re-registration process on chemicals currently under special review, and it should continue to do so. But re-registration should not be required as evidence of a valid registration. This could result in many minor products being declared invalid simply because EPA has not yet had the time to process the re-registration.

Section 5 of H.R. 3818 would amend procedures for approving experimental permits. The modified provisions would certainly obstruct and may essentially make it impossible to properly test new product candidates under actual field conditions. Experimental permits are an essential part of product development. The modifications suggested provide unnecessary road blocks to good field testing. It must be remembered that products under test can only be used for test purposes, and any treated food crop must be destroyed.

Further, a total ban on testing any product previously cancelled or suspended is too rigid. This question should be judged solely on the individual merits of the case at hand. A product cancelled for certain uses found to result in environmental problems might have special usefulness in a different kind of application.

By instructing the Administrator to either cancel a product or hold hearings in response to loosely defined circumstances, Section 6(b) of H.R. 3818 guarantees obstructionist litigation aimed at the suspension of safe and useful chemicals. The Administrator must continue to be provided discretionary authority regarding emergency suspensions and public hearings, as in current law.

Section 18 of FIFRA is designed to provide for emergency use of products in a special situation. Section 18 authority has commonly been used for products which have been sufficiently well advanced in their development to be of known value yet not cleared for the emergency at hand. The proposed modification in H.R. 3818 would unreasonably restrict federal and state authorities to act effectively to meet emergency pest problems. Sufficient flexibility to react to such situations must be allowed to continue given the considerable length of time necessary to clear a product for full registration.

Section 24 modifications would add needless restrictions to states' registration authorities to meet special local needs. Currently any such special state registration can be extended only to products fully registered under EPA for specific uses which do not include the special local need at hand. In using these authorities, states are not by-passing EPA or approving non-tested products.

Section 17 of the proposed legislation requires development of new regulations governing pesticide use, taking into account the need to establish buffer zones for pesticide application, as well as advance warning to "individuals present in the areas." Mr. Chairman, the EPA considered establishing buffer zones for application of pesticides in cotton fields three years ago but abandoned this initiative when it became clear that there is no practical means for a farmer to adhere to such rules. The establishment of buffer zones would be tantamount to simply prohibiting the use of chemicals on cropland. The boundaries of a field are precisely where weeds and insects gestate, and where early control is most important. If the producer could not treat the cropland in these buffer zones, then he would be forced to apply chemicals even more often in order to control the pests which would be allowed to proliferate in the boundary zones and spread to the central area of the field.

Providing advance warnings of pesticide application intentions to "individuals present in the areas" would likewise pose an impossible task for

producers to comply with. Even if the definition of such individuals included only adjacent landowners and/or tenants, contacting each such individual each time a pesticide application became necessary would become a formidable task. In fact, developing a reasonable definition of "individuals present in the areas" seems a formidable, and even impossible task.

To conclude my statement, Mr. Chairman, I would like to share with you the findings of a pesticide exposure study which the NAWG has just released. The study is a comparison of health histories of wheat grower families who, naturally, have been exposed to a broad range of herbicides and pesticides over a period of many years, with the families of a sibling of the wheat grower. The siblings' families were not occupationally exposed to crop protection chemicals.

The study, which focused on reproductive abnormalities, found no negative trends related to reproduction in wheat grower families who participated in the study. In fact, there were lower occurrences of miscarriages, abortions, and stillbirths in families of wheat growers than in their siblings' families. This same trend is evident in the evaluation of the numbers of birth defects in wheat grower and sibling families.

Mr. Chairman, I would like to ask that a more complete summarization of the conclusions of the study be included as part of my statement at today's hearing. The study summary is attached to my statement.

Thank you very much for your consideration of the views of the National Association of Wheat Growers regarding H.R. 3818. I would be pleased to answer any questions which the subcommittee may have.

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Reproduction Not Affected by Pesticide Exposure NAWG Study Shows

by Margie Williams

Wheat growers who routinely use pesticides on their farms have not suffered higher rates of miscarriages, stillbirths, or birth defects than non-exposed siblings. That is the preliminary result of a study sponsored by the NAWG. The study was undertaken to shed more light on possible adverse health effects of pesticide use.

While realizing that it is impossible to establish the complete absence of adverse health effects of pesticide use, the NAWG, after seeking the professional advice of Hopes Consulting, Inc., decided that it would at least be possible to analyze the health histories of a cross sampling of wheat growers for indications of negative trends related to reproduction. The study is focused on reproductive complications, since public concerns related to pesticide use often center around this issue. Hopes Consulting was selected to conduct the research.

Detailed statistical analysis of data collected by Hopes, which will fully interpret any differences among the population groups under study, is yet to be completed. Comparative trends among the groups are evident from the initial data review, however.

Data Collection

Clifford Roan, NAWG's project director and leader of a team of epidemiologists, entomologists,

Author Margie Williams is director of government affairs, National Association of Wheat Growers, Washington, D.C.



chemists, physicians, computer specialists, and records management experts who participated in the project, is a seasoned professional in population studies. Roan, president of Hopes Consulting, completed a study in 1981 of agricultural aviators and their siblings for the National Agricultural Aviation Association.

The pilots' study was very similar to the NAWG project, and produced many similar results. The NAWG study, in fact, was intentionally designed to complement the agricultural aviation study to strengthen the findings of both by widening the population under evaluation.

The NAWG study is based on information collected voluntarily from randomly selected wheat grower families in NAWG's 16 member states. Approximately 10 percent of the 1,500 families who received health surveys responded. The response rate for siblings

of the wheat grower families was 3.8 percent.

The sibling families had no pesticide related occupations, and were therefore considered the "control" group for purposes of comparing health histories. By comparing sibling families, any inherited predispositions toward a particular health problem would be approximately the same.

Farmers participating in the study indicated that they had applied pesticides themselves in their farming operations, and that they had also hired professional applicators.

The data collected by Roan and his colleagues, Kenneth Olds, Helen Seufert, and others, were used to compare demographic statistics of wheat producers, including age, weight, education, and height, with their brothers and sisters and the spouses of their brothers and sisters. Comparisons between these groups were also

extended to general health status — the number of children born to the couples, the number of boys versus the number of girls, the number of miscarriages and stillbirths, and the numbers and kinds of birth defects.

Reproductive Outcomes

The data in Table I summarize reproductive information available on wheat growers and their wives, and the "control males," who are siblings of wheat growers or husbands of siblings, and "control females," who are siblings of wheat growers, or wives of siblings. The table indicates a higher average number of births in wheat grower families, compared to their siblings, but much lower occurrences of miscarriages, abortions, and stillbirths. The average rate of these occurrences among wheat growers was 114.1 per 1,000 and 133.5 per 1,000 among wheat growers spouses. The rate for "control males" measured 203.7 per 1,000, and for "control females" 198.3 per 1,000.

It has not yet been possible, based on health history data collected from the two populations, life style habits, and other factors, to account for the trend toward the higher sibling incidence of interrupted pregnancies and stillbirths. A more extensive population comparison would need to be undertaken in order to investigate this trend further. It is interesting to note, however, that a similar trend indicating a higher sibling incidence of interrupted pregnancies and stillbirths was discovered in the ag pilots' study.

The fact that wheat grower families do not exhibit a trend toward greater reproductive mortality than their siblings' families is the important finding of this study.

Birth Defects and Early Childhood Diseases

The occurrence of birth defects in both populations under study was so low that evaluation of these data was difficult. However, it can be stated that the percent of individuals reporting one or more birth defects in their children appears lower in the wheat grower respondents and their spouses than in the control males and females. These data appear in Table II.

The number of live births result-

ing in a reported birth defect is another measure of reproductive morbidity. The data in Table III do not suggest that the occupation of wheat production is responsible for any increase in the numbers of birth defects reported by the study group. The same general conclusion was drawn in the comparative study of agricultural aviator families and their siblings' families.

Conclusions

Complete statistical evaluation of the pesticide exposure data collected by Hopes Consulting has neither been finalized, nor reviewed by the entire project group. But preliminary analysis points to the tentative conclusion that

wheat farmers in the study group do not suffer from any increases in miscarriages or birth defects in comparison with their siblings.

Obviously, it is not possible to characterize the entire population of wheat farmers from this data, since the population sample is comprised of only 148 wheat growers, 121 wheat grower spouses, 53 control males, and 51 control females. But, in spite of these limitations, the fact that prolonged pesticide exposure does not appear to cause abnormal reproductive performance in wheat growers is clearly revealed in the study.

This finding is a challenge to those who would obstruct necessary use of pesticides on cropland.

Table I
Miscarriages, abortions and stillbirths in the families of
WHEAT GROWERS and their SIBLINGS.

Group	Miscarriages Abortions and Stillbirths	Prematures	Full Term Pregnancies	Average # of Pregnancies
Wheat Growers	42	6	362	2.77
Control Males	22	4	104	2.45
Wheat Grower's Spouses	43	6	316	3.02
Control Females ...	23	4	112	2.28

Table II
The number of individuals reporting birth defects
and early childhood diseases in the four study groups.

Group	Number in Group	Number of Individuals Reporting Defects	Percent Reporting Defects
Wheat Growers	145	25	17.24
Control Males	51	11	21.57
Wheat Grower's Spouses ..	121	20	16.53
Control Females	58	11	18.95

Table III
The number of birth defects reported by the study groups
in relation to the number of live births.

Group	Total live births	Total birth defects	Percent defects
Wheat Growers	368	43	11.68
Control Males	108	19	17.59
Wheat Grower's Spouses ..	322	32	9.94
Control Females	116	21	18.10

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STATEMENT
OF
ROQUE SEVILLA
FUNDACION NATURA
QUITO, ECUADOR
BEFORE THE
SUBCOMMITTEE ON DEPARTMENT OPERATIONS,
RESEARCH AND FOREIGN AGRICULTURE
COMMITTEE ON AGRICULTURE
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.
CONCERNING
PESTICIDE EXPORTS

OCTOBER 6, 1983

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I am Roque Sevilla, President of the Fundacion Natura. The Fundacion is a private non-profit environmental protection organization in Ecuador founded in 1978. With its headquarters in Quito and over 1500 members nationwide, the Fundacion undertakes and provides funding for projects on environmental education, pesticide control, forestry, wildlife conservation, and national parks management.

I am very pleased to be here as a guest in your country. I am visiting the United States as a Stephen P. Duggan Fellow of the Natural Resources Defense Council. The purpose of the Duggan Fellowship is to provide an opportunity for environmentalists from developing nations to come to the United States for an extended period in which to carry out research, exchange information, and gain practical experience. During the brief time since my arrival in the United States, I have been very impressed by the many people I have met who have a strong commitment to environmental protection and an interest in the environmental problems of Third World nations. I consider it a great honor and privilege for me to have this opportunity to present my views to the Subcommittee regarding pesticide exports.

I must point out that, in addition to my work with the Fundacion, I am an insurance broker and a farmer. I use pesticides on my own crops and recognize both their benefits and hazards. I do share with many others in Latin America a concern over the growing problem of pesticide abuse. In June 1983, I participated in a meeting in Mexico of representatives from non-

governmental organizations from 12 Latin American and Caribbean countries which led to the creation of a network within our region linked to the Pesticide Action Network-International or PAN. My organization is now serving as the PAN coordinator for Latin America.

At the Mexico meeting, I found that the problem of increasing pesticide misuse that we are experiencing in Ecuador is common throughout the region. During the last decade, we have witnessed a tremendous growth in the importation and use of pesticides. Pesticides are being used not only by large sophisticated farmers, but also increasingly by small peasant farmers in even the most remote regions of our nation. The medical community is beginning to recognize that a number of the health problems of the rural people are related to pesticide exposure. There is also concern about effects of pesticides on wildlife and the contamination of fish and water.

Just two weeks ago over 300 people in the town of Checa had to be hospitalized for pesticide poisoning after eating the Ecuadorean equivalent of your "popcorn". The townspeople were unaware that they were eating corn which had been treated with parathion, a highly toxic pesticide whose use is restricted in the United States. Mortality statistics indicate that pesticide misuse may be a major contributor to death and disease in Ecuador. In the province of Chimborazo where pesticides are used most heavily, almost 6% of the reported deaths are caused by accidental poisoning. Almost two-thirds of these deaths occur in

rural areas, where pesticides constitute virtually the only poisons present. More disturbing is the apparent link to respiratory problems. Nearly one-third of reported deaths in the province are caused by respiratory disease; almost 80% of these deaths are in rural areas. There is an absence of precise data on the health effects of pesticide misuse. However, we believe that the information now available is sufficient to warrant much more severe restrictions on the distribution and use of pesticides.

Also recently it has been revealed that shrimp and fish from our coastal waters contained excessively high residues of DDT. This pesticide has been all but banned here, but is still used in Ecuador -- officially only for malaria control, but often sold freely for agricultural purposes.

Ecuador is a major producer and exporter of bananas, many of which are shipped to the United States. The pesticide DBCP is still widely used on our banana plantations. In the U.S., the EPA suspended all uses of this pesticide, except under very carefully controlled and monitored conditions in the cultivation of pineapples in Hawaii. The EPA requires all those working with DBCP to wear respirators and full-body impermeable clothing. The type of protective gear required to handle DBCP and other highly toxic pesticides is simply not available or extremely expensive in our country. In any event, in a tropical climate with temperatures often between 95-110 degrees Fahrenheit, it is very difficult, if not impossible, to work while wearing heavy clothing or goggles.

It must also be remembered that many of our farm workers are poorly educated, and often illiterate. They commonly think of pesticides as a medicine which is used to cure plants of the "diseases" caused by insects or other pests. As a result, there is a total lack of awareness that pesticides are poisons which can, if improperly used, harm their health and their environment.

Pesticides are generally sold in Ecuador without any instructions as to their use or with instructions which cannot be understood or followed by farmworkers. For example, it is not unusual for workers to mix a brew of such pesticides as 2-4 D, parathion, and aldrin. In the mountains, farmers wear heavy wool ponchos and hats for work in the fields and for warmth in their houses. They cannot wash these clothes when they become contaminated with pesticides during spraying. They have small houses -- one or two rooms at most. Thus, they cannot store pesticides out of reach of children or domestic animals. Furthermore, they have no means of "calling a doctor" if a family member is poisoned. It is a sad paradox that the richer farmers who can understand the need for and afford protective clothing are the ones most likely to cease using the most toxic pesticides, whereas poor farmers who do not understand their dangers and continue using them have no means to protect themselves. I must conclude that these farmers simply cannot use highly toxic pesticides safely.

In 1978-82, Ecuador imported 20 thousand metric tons of active pesticide ingredients. The majority of these imports were of pesticides banned or restricted in the U.S. Aldrin, dieldrin, lindane, paraquat, carbofuran, and BHC are among the eleven pesticides most widely used in Ecuador. A number of American companies, including Union Carbide, Dow Chemical, Chevron, Cyanamid, DuPont, and Rohm & Haas, have subsidiaries or sales representatives in Ecuador. They widely advertise their products in my country. If you travel to the rural areas, you will see the sides of a number of homes painted with colorful advertisements for their products. Ultimately, these pesticides can return to your table as residues on the bananas, coffee, and cocoa which we sell to the United States. Thus, I consider the problem of pesticide abuse which I have briefly described as a problem that is shared by both our nations.

In my country, we rely upon the label "Made in the United States of America". In regard to pesticides, we assume that a product made here or by a U.S. company has been approved by your environmental and health officials. Our own Ministries of Agriculture and Health have a cooperative program for pesticide registration and control. However, they have very few people with very limited resources and access to information. It is simply ridiculous to suggest that my country, and I believe that this is true for most of the nations in South America, can be or should be able to undertake the extensive testing, analysis, and

reviews which are carried out in the U.S. in order to decide whether or not to allow the use of a pesticide.

Many Latin Americans are very disturbed by the practice in the United States of dumping banned, dangerous pesticides overseas. Last October, the Inter-American Economic and Social Council of the Organisation of American States passed a resolution (CIES/Res. 244) which noted:

That sales of toxic products, such as pesticides and herbicides, either restricted or prohibited by the United States, cause large economic and social losses in the Latin American and Caribbean countries."

The nation of Venezuela was the leader in the passage of the United Nations General Assembly Resolution (No. 37-137), which called upon countries to prohibit the export of banned products, unless requests for such products are explicitly endorsed or allowed by importing countries.

To a Latin American, our concern about the export of banned pesticides is not much different than your government's concern about exports from Latin America of cocaine and marijuana. The United States has strongly urged the Governments of Colombia and Peru, for example, to eradicate or stop the shipment abroad of what unfortunately have become important "cash crops". I agree that it is more effective to go to the source of this hazardous export problem, than to rely on controls at your nation's borders. Third World countries are asking the industrialized nations to do the same thing in regard to dangerous pesticides.

I am not suggesting, in any way, that the United States has the sole responsibility for the problem of pesticide abuse in my own and other nations in Latin America. At the June meeting of PAN-Latin America, the delegates called upon their own Governments to impose effective controls on the import, export, production, and use of pesticides, to support research in less chemical intensive forms of agriculture, and to promote laws and programs to assure that there is much greater awareness among our people regarding the dangers posed by pesticides.

I appreciate the efforts which have been made by the U.S. Congress to date to assure that foreign purchasers of pesticides not approved for use in the United States are aware of that fact and to provide importing governments with data regarding such pesticides. I also support the bill introduced by Congressman Heftel which would expand and strengthen requirements for exports of banned and restricted pesticides. However, I believe that the U.S. should go much further to eliminate the "double standard" which exists in your pesticide laws. I would suggest that there be a prohibition against the export of any pesticide product which is not approved for use here or which has been suspended, cancelled, or restricted, unless both the U.S. and the importing government can agree that such a product can be safely used and there is no safer alternative. In addition, I believe that it is in the interest of the U.S. to assist developing countries to improve their regulation of pesticides, education and training of workers, and research on pest control methods more appropriate for the much different conditions there. I would hope that the

U.S. Environmental Protection Agency and Agency for International Development, as well as the American Executive Directors of the four U.S.-supported multilateral development banks, could be given a clear mandate to work with developing countries to curb pesticide abuse.

There is clearly a very difficult problem which will require cooperation among all the responsible parties -- exporting and importing governments, agrochemical companies, farmers, farmworkers, and the public. It is a challenge which the protection of our health, environment, and food supply demands to be met. I do appreciate your concern and the chance to appear here. Thank you.



NATIONAL WILDLIFE FEDERATION

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STATEMENT OF BARBARA J. BRAMBLE
ON BEHALF OF THE NATIONAL WILDLIFE FEDERATION
BEFORE THE HOUSE SUBCOMMITTEE ON
DEPARTMENT OPERATIONS, RESEARCH
AND FOREIGN AGRICULTURE
OF THE COMMITTEE ON AGRICULTURE

October 6, 1983

On behalf of the National Wildlife Federation, I am pleased to have the opportunity to appear here today in support of the Pesticide Import and Export Act of 1983, H.R. 3254. I am Barbara J. Bramble, Director of International Programs of the National Wildlife Federation. The Federation is the nation's largest conservation organization, with over 4 million members and supporters, dedicated to the wise management and use of natural resources. The Federation's constituency of concerned sportsmen has long been uneasy about the proliferation of pesticide use in agriculture and forestry, because of both the decimation of fish and wildlife, and the threats of long-term damage to the natural balance of predators and prey that constitutes a healthy ecosystem.

After a decade of regulation under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), some of the more environmentally persistent pesticides are under control in this country, and the environmental consequences of their use are receding. For example, our bald eagles are slowly increasing in numbers. At the same time, however, a whole new set of

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pesticide problems is surfacing: groundwater contamination by Temik and other products; the amazingly high cancer risk rates of workers exposed to Ethylene Dibromide (EDB); the acutely toxic character of the newer pesticide chemicals; the growing resistance of pests to the chemicals on which many farmers are dependent; the destruction of natural predators which converts formerly benign insects into pests; and the presence of residues of many of these substances in our food supply.

These problems originated in countries such as ours, with a highly industrialized form of agriculture. But as pesticide use spreads around the world, some of the more drastic adverse impacts are showing up in developing countries. Through its work with the worldwide Pesticide Action Network, the Federation's International Program has been gathering information on pesticide exports, especially the hazards of their misuse in developing countries, and the residues on food that can return to haunt us here in the United States.

The Federation's 51 affiliate organizations unanimously passed a resolution at this year's Annual Meeting calling for controls on hazardous pesticide exports and an active U.S. role in providing information and technical assistance to developing countries, to better regulate pesticide use within their own borders and to promote integrated pest management.^{1/}

^{1/} A copy of this resolution was attached to our statement submitted June 9, 1983.

Therefore, we are pleased that Congressman Heftel has taken the important step of introducing legislation addressed specifically at some of the problems caused by pesticide exports. H.R. 3254 would amend FIFRA in three significant respects: 1) it would require submittal to EPA of pesticide export data needed by the FDA to improve its residue monitoring program (EPA will share this information with FDA and prepare an annual report summarizing the data for the public); 2) it would clarify and strengthen the notification system under which importing country governments are given the opportunity to decide whether or not to accept pesticides unregistered in the United States; and 3) it would mandate the revocation of "tolerance levels" for pesticide residues in food when the use of the pesticide is cancelled or suspended in the U.S., thus closing a loophole that has permitted legal distribution of imported foods containing residues of pesticides that were cancelled here.

The proposed legislation is a moderate step that would help to arm the EPA and FDA with information that might improve their chances to assure the safety of imported foods consumed in this country. And it would arm importing country governments with information and the opportunity to make an informed choice regarding the purchase of particularly hazardous and/or persistent pesticides, before the sale is consummated. The proposed Import and Export Act of 1983 would be a welcome move by the United States toward taking a more responsible role as a trading

partner in the pesticide business. We must make clear, however, that this legislation does not address all of our concerns. We will detail some of the crucial areas that should be covered later in our testimony. Suffice it to say here that we support H.R. 3254 as the minimum necessary response to a complex and compelling problem.

Background on the Problem

The goals of the National Wildlife Federation are the promotion of sustainable agriculture in developing countries, and the reduction to a minimum of the danger to users and consumers from exposure to pesticides and their residues. As we explained in our statement submitted for the record of the June 9th hearing before this Subcommittee, "There is an inseparable connection between sustainable economic development and long-term natural resources conservation." Thus, only through improvement of agricultural production, using ecologically sustainable systems, can the current high rate of destruction of wildlife and other natural resources in developing countries be slowed. But widespread pesticide use in many areas is leading in the opposite direction:

--Ecological and economic disruption looms in such areas as the Gezira scheme in the Sudan, where pest resistance, secondary pests and the high costs of increasingly ineffective pesticide mixes are combining to threaten the cotton crop,

the mainstay of the Sudanese economy.^{2/} Already the pesticide bill exceeds the foreign exchange generated by cotton sales, necessitating World Bank and other loans to try to save this year's crop. Between 1959 and 1979 the average number of sprays per season has risen from 1 to 9.3 while yields have fallen. The U.N.'s experts at the Food and Agricultural Organization (FAO) and the Environment Program expect that the whitefly will shortly be "beyond effective chemical control."^{3/} Our modern agricultural technology may not be leading to a higher standard of living but to bankruptcy.

--Widespread poisonings of the farm workers and their families have been documented in many regions. In Sri Lanka alone with a population of less than 15 million people, there are over 15,000 cases of poisoning each year and over a thousand fatalities.^{4/} The record of this Subcommittee's investigation of these issues contains eloquent testimony by Vincent Gallagher of the Department of Labor, describing conditions he witnessed in Peru. Particularly dangerous are contaminated irrigation ditches, which are often a major source of water for agricultural families. Unprotected workers are frequently exposed to chemicals such as Parathion which enters through the skin, and has poisoned thousands of people even in the United States.

^{2/} The record of the June 9 oversight hearing before this Subcommittee contains a recent paper by Dr. Ray Smith of the Consortium for International Crop Protection describing this situation in detail.

^{3/} David Bull, A Growing Problem: Pesticides and the Third World Poor, Oxfam 1982, p. 20.

^{4/} Ibid. p. 44.

--Monitoring by the FDA is not preventing the exposure of American consumers to pesticide residues on imported food. Without more information about which pesticides are actually used on a food product, the FDA testing procedure is equivalent to an expensive guessing game. Available time and staff are limited, so multi-residue analyses are the standard operating method. According to Joseph Hile from the FDA, who appeared before you at the June 9 oversight hearing, these tests do not detect at least 100 pesticides that are known to be used on food.

The Government Accounting Office report, "Monitoring and Food Safety -- An Overview of Past Studies" published just last month, updates GAO's thorough 1979 analysis of these problems. According to the study, even though the FDA has placed special emphasis on monitoring Mexican food shipments and working with the Mexican government to reduce violations, over 100 shipments with illegal residues are found each year. Furthermore, "almost one-third of the Mexican produce shipments found to contain violative pesticide residues under FDA's special emphasis program entered U.S. commerce." GAO, September 1983, p. 43 (emphasis added). Because of FDA reluctance to retain perishable shipments during testing, lack of a meaningful penalty (such as forfeiture of a bond), and failure to use a quick bioassay screening method, violations continue to show up too late for appropriate action. The perishable food is distributed to stores before the FDA even gets the test results. Indeed, from 1979 through 1981 the percentage of violative

shipments escaping the monitoring system and reaching U.S. consumers was increasing. GAO, September 1983, p. 44.

The Heftel Bill

A. Residues

H.R. 3254 would make several important changes in FIFRA, three of which affect pesticide residue monitoring. First, it would amend Section 7 of FIFRA to require exporters to file more complete information with EPA concerning the quantities, destination and end use of the exported products. This crucial information would be shared with the FDA to permit better targetting of the residue monitoring tests. A related provision in Section 3(a) of the Heftel bill would require the importing government to disclose the intended use of the pesticide in that country. This would solve one of the most persistent difficulties identified by the GAO in its 1979 and 1983 updated reports.

Next Section 5 would amend Section 6 of FIFRA, to force revocation of tolerance levels (legal limits of pesticide residues permitted on food products) when a pesticide use is cancelled or suspended. The current EPA practice is to retain the tolerance levels, which can legally permit residues as high as were once allowed in the U.S. before the pesticide was cancelled or suspended. This in turn has meant that cancelled or suspended pesticides can be used on food destined for U.S. markets, and the FDA cannot bar them unless the tolerance level is exceeded.

The reason given is that persistent organochlorine pesticides will remain in the environment for a long time and thus a zero residue level cannot be achieved. But, as the Heftel bill provides, the appropriate response is to set an "action level" low enough to reflect environmental residues, without permitting the higher residues which would result from actual use of the chemical.

Finally, the bill would close a loophole which currently encourages export and widespread use of pesticides which have only temporary, perhaps emergency, limited use permits in the U.S. Currently, once a tolerance is established, to allow testing on a small scale, the tolerance applies to imported food products as well. The administrative procedure to evaluate the temporary, limited, permit application does not often consider the effects or risks of more widespread foreign use. In a major step forward, the Heftel bill would limit the tolerance to domestic food products unless the use permit covers the foreign uses.

B. Notification

The current notification system is a two-tiered arrangement in which the importer, perhaps a subsidiary of the exporter, first signs an acknowledgement that the product is unregistered in the U.S.; and then this is furnished to EPA, which sends it to the State Department, which then works through the U.S. embassy to identify the responsible official to receive notification in the importing countries. By this time, of course,

the shipment is well on its way, or perhaps already distributed within the country. For developing countries, some of which are beginning to regulate hazardous chemicals, the opportunity to exercise their sovereignty in such matters as pesticide imports is fundamental. And if their choice is to be a real one, it must be implemented before the shipment arrives on the dock. Otherwise the shipment can become a dangerous "hot potato," hard to dispose of, and often not even welcome in its country of origin.

The Heftel bill places the emphasis of the notification system where it belongs: on the government to government exchange of information. Under Section 3, the importing government must acknowledge its understanding of the problems associated with the pesticide before the shipment. And EPA must keep a list of the appropriate officials of each country to receive notifications. For certain categories of chemicals, the importing government must request the shipment, which in some countries will encourage consideration of the potential impacts of misuse, lack of safety equipment, etc. Furthermore, Section 3(b) of the bill would require a description of steps the importing government will take to make available instructions for safe handling, use and disposal of the pesticide. This may stimulate the development of education and training efforts in some countries.

The significance of the change that the Heftel bill would bring--giving certain developing countries a chance to choose

what pesticides will be permitted within their borders--cannot be ignored. But neither should it be overemphasized. In many countries the necessary government request will be automatic even where safe use of hazardous pesticides is extremely unlikely. And in most developing countries it will be years before the necessary education and training reach the rural areas.

The big question surrounding the notification process is, of course, what chemicals and products are covered. Currently FIFRA requires notification for pesticides "not registered for use in the United States." The Heftel bill makes some significant progress on this point by clarifying that pesticides voluntarily withdrawn from the market are included within this requirement, as well as those for which "some or all" uses or formulations were cancelled or denied. The present provision using the term "not registered" should be understood to include these categories, but there is some confusion on the part of EPA and industry.

The reasons why these categories must be covered under Section 17 are clear:

Voluntarily withdrawn--Hazardous pesticides cannot be permitted to escape the notification system simply because the producer evades an EPA cancellation. For example, Nitrofen (TOK) was voluntarily suspended in the face of EPA regulatory action in the early 1980's. Remaining stocks have disappeared, but no export notification has been sent to any receiving

country. TOK is the most potent teratogen ever tested at EPA (tests could not achieve a "no effect" level), and an oncogen and mutagen as well, according to EPA scientists. It was withdrawn last week from U.S. registration under imminent threat of direct EPA action.

Partial cancellation--Most registration cancellations in the United States cover only certain uses of a pesticide. So there must be no implication that a pesticide needs to be totally banned to come within the notification procedure. And yet apparently industry and/or EPA is interpreting Section 17 to be limited in this way. For example, Endrin, which was cancelled in 1979 for use east of the Mississippi, still has permitted but restricted uses in the west. It was exported in 1982, according to EPA officials, yet no notification was sent.

Thus clarification that Section 17 includes voluntarily withdrawn and partially cancelled pesticides is certainly needed. But if the legislation is going to specifically enumerate two types of "unregistered" pesticides, Section 3(a) of the bill must then list the other types, or risk confusing the issue further. Thus "suspended" and "never-registered" pesticides must be specifically mentioned as well, in order to retain the extent of present coverage.

We would recommend, however, a simpler paragraph which covers all of these categories. A draft of such a provision is attached.

The Heftel bill makes important progress in Section 3(b), by including "restricted use" and "acutely toxic" pesticides in the notification process. This is significant because these are the chemicals which may pose the most immediate danger in developing countries. As a broad generalization, many of the pesticides with use cancellations in the U.S. risk long-term environmental contamination, cancer, other chronic disease or birth defects. On the other hand, "restricted use" pesticides tend to be immediately poisonous and in this country are only allowed to be used by certified trained applicators wearing protective equipment and clothing. In developing countries the long-term threats are compounded by thousands of poisonings and fatalities each year because workers do not understand the risk and/or cannot obtain protective gear. In this bill, the categories of "restricted" and "acutely toxic" are treated somewhat differently than cancelled pesticides, in that the importing country need not actually request the chemical. But the crucial point is that, prior to export, both the purchaser and regulatory official must sign an acknowledgement of the hazards of the pesticide. In and of itself, this provision is clearly not going to reduce worker exposure to toxic pesticides, but it is a step in the right direction.

Additional Necessary Measures

As we have stated above, we believe the Heftel bill would bring some important improvements to U.S. treatment of pesticide exports. But the scope of the problems, the risks to

human health, fish and wildlife, and ecological balance, require additional measures as well.

1. For example, as was correctly noted by Congressmen Roberts and Gunderson at the June 9 hearing, little progress in this area will be made until education and safety training reaches rural farmworkers, and at least a rudimentary regulatory capability is established in the importing countries. EPA could provide technical assistance in this regard, but as yet it has not even worked out a cooperative agreement with U.S. AID. The U.S. should not stand aloof from the consequences of our own exports. And yet we generally leave developing countries on their own to cope with the complex health and ecological problems of pesticide use. By and large most of these countries are presently unequipped to carry this burden. The FAO's Plant Protection Service reported in 1981 that 81 countries were either known to have no pesticide control measures or no information was available.^{5/} Therefore besides information, the Import and Export Act should make available, on request, technical assistance in health and safety training and regulation.

2. Similarly, widespread establishment of Integrated Pest Management (IPM) is the only way pesticides will have any long-term use in agriculture. The collapse of the unsustainable cotton-growing technology of the last few decades is only the first example of the hazards of dependence on chemicals. We should not force other countries into the economic vicious

^{5/} Bull, op.cit. p. 144.

cycle in which the Sudan now finds itself before offering assistance in switching to IPM. Thus pesticide export legislation should also mandate a greatly increased effort by the U.S., on request, to assist establishment of IPM systems in the field.

These programs should not be run by industry, nor by foreign experts. Appropriate counterparts in both the importing country governments and non-governmental organizations must take central roles.

3. Next, to deal with a problem identified by Congressman Volkmer at the June 9 hearing, the proposed legislation should cover pesticides manufactured in the United States, but never registered for use here. Very little information exists on the scope of this problem, but some pesticides are produced here solely for export. FIFRA currently requires no acute or chronic health and safety or environmental information on these chemicals. The only information required is production figures compiled under Section 7. This results in a serious problem: if an importing government asks for data on appropriate safety precautions or the acute or chronic effects or threats to the environment posed by use of such a chemical, EPA has nothing to send. Thus in order to make the notification system work in a rational way, basic health, safety and environmental data should be required for all pesticides produced here, whether or not they are registered. The production of these pesticides would be in no way be affected by such a requirement.

It would merely enable EPA to provide vital information on the products which we produce and sell.

4. Enforcement is another area which should be tackled by this Subcommittee. Currently, production information collected under Section 7 of FIFRA by the Compliance Monitoring Staff of the Office of Pesticides and Toxic Substances could be used to check whether producers of unregistered pesticides are complying with the Section 17 notification requirement. But this has never been done, according to EPA officials. Simply requiring compilation of more data under Section 7 (as H.R. 3254 would do) would not address this problem. Compliance must be monitored and enforced. We don't know of a single instance in which export without notification has resulted in an enforcement action or even a reprimand. We don't believe EPA is even looking for violations, that could be verified with existing information, even though officials believe they are happening. For example, according to EPA's Economic Analysis Service, Endrin and Toxaphene, both under significant use cancellations, were exported in 1982 and 1983. We have the list of pesticides for which notices were sent in 1982 and 1983, and neither of these chemicals appear there.

One simple first step would be for EPA to compile a list of pesticides produced here but "unregistered" (and thus subject to Section 17(a)), using data from Sections 7, 3, and 6 of FIFRA, so that exporters are warned which chemicals are covered, and EPA knows which to check on. If EPA believes it

lacks authority or resources to enforce Section 17, that issue should be discussed when its representatives appear before this Subcommittee at a later hearing session.

5. As noted earlier, the restricted use pesticides are often immediately hazardous to health of humans and fish and wildlife populations. Thus we believe they should be treated as stringently as those with cancelled or suspended uses, so that importing countries must request them after reviewing information on their hazards.

6. Finally, the proposed legislation does not deal with the fundamental problem of the pesticide double standard. When the United States decides, after years of regulatory wrangling, to protect our citizens against use of a particular pesticide, it is difficult to justify our policy permitting it to be promoted and sold to other countries who are often less prepared to deal with its hazards.

Industry representatives have argued before this Subcommittee that such a limitation is unnecessary or inappropriate. They have two major points:

- A. It is claimed that developing countries need these cancelled pesticides because of their special uses for their more intractable pest problems, or in order to feed a poor and growing population. But most of these chemicals are used on export crops such as cotton and coffee, not food. Furthermore, pesticides are not often the only, or even a very good, solution to special

problems, such as mosquito control to reduce disease.

In fact malaria has been on the increase in many areas, precisely because of the overuse of pesticides in agriculture resulting in mosquito resistance.

Malaria cases increased worldwide by over 230% between 1972 and 1976.^{6/} Difficult pest control problems may

respond better to biological control alternatives, which should be more vigorously pursued. According to the FAO, 432 insect varieties are now resistant to one or more pesticides. For example, the diamond-back moth of Southeast Asia has developed resistance to at least eleven insecticides, including members of all the major groups, even the new pyrethroids.^{7/}

Professor Gordon Conway of the Imperial College of London wrote in 1980:

Once resistance has become widespread to the synthetic pyrethroids and to the growth regulators currently under trial against the diamond-back moth there will be no further chemical insecticides available. This point could well be reached in three to five years.^{8/}

- B. Similarly, industry representatives have argued that each country can control pesticide use within its own borders, and thus any chemical which can legally be sold abroad should be freely exported. While ideal

^{6/} Bull, op.cit. p. 30.

^{7/} Bull, op.cit. p. 18.

^{8/} Gordon R. Conway (ed), Pesticide Resistance and World Food Production, Imperial College Centre for Environmental Tehncology, University of London, 1980, p. 78.

in theory, this view is totally unrealistic at present. FAO figures confirm that most developing countries have no regulatory machinery at all and even among those that do, enforcement is spotty or non-existent.^{9/}

In discussing this issue with Federation members and supporters during the last year I found them not only opposed to the double standard, but surprised and troubled to find that it existed. In addition, we are hearing from conservation groups in other countries about the problems caused by hazardous pesticides in their countries. The nine organizations comprising the Latin American region of the Pesticide Action Network wrote to you, Mr. Chairman, in June, urging the elimination of our double standard (copy attached), and the Federation agrees. Thus for the few pesticides that are in fact cancelled for all uses (whether voluntarily or by agency action), we recommend that their export be prohibited. This is unlikely to injure the competitive position of the United States, since the European community is moving in this same direction; and the United Nations and Organization of American States are urging similar policies for all exporters.^{10/} Instead, the standing of the United States as a responsible trading partner and environmental leader demands that we end our current policy which threatens not only human health, and ecological balance, but also our own food supply.

^{9/} Bull, *op.cit.* p. 144.

^{10/} See resolutions attached.

Recommend Draft Language
for Section 3(a)

1. Section 3(a)--Paragraph (2) of section 17(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 1360(a)(2)) is amended to read as follows:

"(2) in the case of any pesticide which is not registered under Section 3 of this Act, including any pesticide for which any use or formulation has been cancelled, suspended or denied under this Act, or voluntarily cancelled or suspended as defined herein, if before export and after consultation with the Department of State, the Administrator finds that --

/Continue to end of Section 3(a) of H.R. 3254/

2. Add at the end of Section 3(a) --

"For purposes of this paragraph, 'voluntarily cancelled or suspended' means that a use has been suspended or cancelled by the registrant subsequent to the initiation of a special review, registration standard, or a data call in proceeding by the Agency.

PAN INTERNATIONAL

Latin American Regional Center, c/o FUNCIÓN NATURA, Casilla
243, Quito, Ecuador; Telephone 23-91-77; Telex 2488

June 24, 1983

The Honorable George E. Brown, Jr.
Chairman
Subcommittee on Department Operations,
Research and Foreign Agriculture
Committee on Agriculture
U.S. Congress
Washington, D.C. 20515 U.S.A.

Dear Representative Brown,

We understand that your subcommittee will soon consider legislation to correct some of the deficiencies in the United States pesticide export notification program under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), Section 17. We applaud you in your efforts to consider much needed improvements in this program. We would like to share our views with you and the U.S. Congress in the hope that they are given serious consideration.

As background, representatives of nine Latin American countries have recently met in Mexico to discuss the problems experienced in our countries as a result of the export from the U.S. of hazardous pesticide products and technology. As you know, our countries are the recipients of many pesticides which, though produced in the U.S., have never been registered for use in the U.S., or have been cancelled or highly restricted by your government. The export of these pesticides creates serious life-threatening health and environmental effects in our countries.

Because of these problems, we have formed an international network in Latin America, called the Pesticide Action Network (PAN), Latin America. Under the auspices of this organization, we urge you to eliminate the dangerous double standard of one set of rules for your domestic pesticide market, and another for the rest of us who import U.S. pesticides.

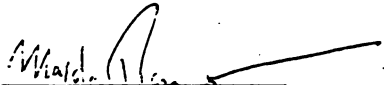
Futhermore, we urge you to eliminate the blackout on health and safety information on U.S. pesticides imported by our countries. We believe that the U.S. government, which has

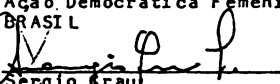
The Honorable George E. Brown, Jr.
Page Two

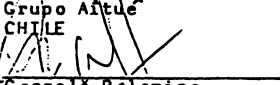
registered export products, has a duty to share the underlying health and safety data used to register those products. We are aware that many U.S. pesticides have been registered on the basis of faulty or incomplete safety data. This is but one example of why it is essential for our organizations and our governments to have access to all registration data so that we can make informed decisions about importing U.S. products. Without this information, our ability to participate in our countries' decisions on pesticide use and ensure the public's right to know is severely restricted.

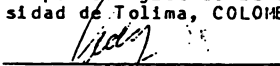
We appreciate your consideration of our urgent concerns and suggestions. We hope you can assist in developing a pesticide export program that is truly protective of the world's population.

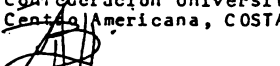
Sincerely yours,



Magda Renner
Acao Democrática Feminina Gaúcha
BRASIL

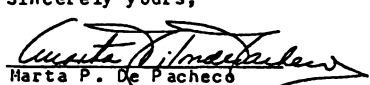

Sergio Grau
Grupo Aitue
CHILE

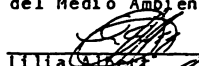

Gonzalo Palomino
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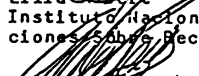

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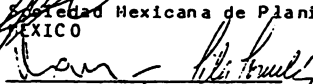

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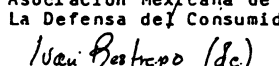

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*Programa Ciencias de la Salud

(Other attachments are held in the committee files.)

STATEMENT OF JAY FELDMAN
NATIONAL COORDINATOR, NATIONAL COALITION
AGAINST THE MISUSE OF PESTICIDES
BEFORE THE
SUBCOMMITTEE ON DEPARTMENT OPERATIONS,
RESEARCH AND FOREIGN AGRICULTURE
COMMITTEE ON AGRICULTURE
U.S. HOUSE OF REPRESENTATIVES
OCTOBER 6, 1983

Thank you for the opportunity to appear before the Subcommittee today. I am Jay Feldman, National Coordinator of the National Coalition Against the Misuse of Pesticides (NCAMP). NCAMP is a broad based network of individuals and small to large public interest organizations in our 50 states.

I am here to deliver a message important to our membership and 26 other national public interest organizations.* I believe that our message goes beyond organizational boundaries and affiliations, cuts through special interests and emerges from deep within the hearts of the American people.

It is a simple and straightforward message: Now is the time to take legislative steps to stop the toxic pesticide contamination and poisoning that is rampant throughout our country and destroying our very fabric of life.

Some might say that this is more easily said than done. However, this Subcommittee has before it legislation --the Federal Insecticide, Fungicide and Rodenticide Reform Act, H.R. 3818-- that could begin a long overdue process of reform. We applaud you, Mr. Chairman, for your cosponsorship of H.R. 3818 and your

*See attachment #1 - list of national organizations.

leadership role in promoting the important reforms contained in the bill.

Change is necessary because of basic problems with our federal pesticide control statute --the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)-- that have plagued us to different degrees across Democratic and Republican Administrations. Those who encourage deferred or no action because of a new management team at the U.S. Environmental Protection Agency (EPA) unfortunately miss this point.

We urge the members of this Subcommittee to do everything in your power to move H.R. 3818 through the legislative process and give the American people and their representatives in Congress an opportunity to better protect the public and the environment from the adverse effects of pesticides.

Our concern about toxic pesticides grows out of the experiences of our broad based network. NCAMP is composed of members with common concerns about pesticide hazards and safety, including family farmers, beekeepers, chemical workers, consumers, and urban and rural residents alike.

The coalition seeks protection for all who may be exposed to pesticides, either through their employment, as consumers, as victims of contaminated drinking water, or as neighbors of dump sites, sprayed fields, forests or rights-of way. NCAMP also promotes alternatives to excessive pesticide use and misuse, such as Integrated Pest Management (IPM) and nonchemical systems of

farming, in an effort to reduce damage to humans and the environment, ease economic burdens over the long-run and improve general public and occupational health.

The American people do not want their legislators to delay in correcting serious deficiencies in federal protections from toxic pesticide contamination and poisoning. Neither do those throughout the world who use American made pesticide products want delay.

While pesticides have been credited with enhancing our country's general quality of life, the dramatically rising use of toxic chemicals also tampers irreversibly with our delicate ecological balance, often threatening our society's human and environmental health. Because of this a carefully constructed "cradle to grave" control program is needed to assure adequate public protection from these poisons, which are deliberately added to our food, environment and consumer products. The existing statutory and regulatory program governing pesticide use takes a hit-or-miss approach to control and does not assure the public that marketed products are indeed safe.

A review of the EPA's pesticide program and its authorizing legislation reveals numerous problems, such as:

- the recently publicized faulty product safety testing data produced by the Industrial Bio-Test Laboratories, Inc. (IBT) and other labs;
- no or inadequate health and environmental effects

test data, including studies for cancer, birth defects and genetic damage, for the majority of products marketed today;

- virtually no public information on product risk;
- back door product registration allowing the continual and expanded marketing of untested or poorly tested pesticides;
- poor enforcement of the federal law against violators, and;
- the unconscionable exporting of banned or unregistered pesticide products.

The above represents some of the problems not only for the user of chemical pesticides --farmers, farmworkers, home gardeners and consumers of household products-- but literally for the entire society which is not directly handling toxic pesticides --consumers of food and water and those exposed through community spray programs or spray drift from farms, forests or rights-of-way.

The existing federal pesticide control program under FIFRA seeks to meet competing public and chemical industry goals. While the chemical industry wants to see the law assure speedy marketing of their pesticide products and protections for investments in product development, the public and worker population of this country want to see this law protect them, their families and the environment from exposure to toxic pesticides which have both short- and long-term health risk potential. In return for a registration

number and exclusive use periods that establish 10-year monopolies on product sales, the manufacturer is theoretically required to produce evidence of a product's safety and effectiveness. I say theoretically because, as will be discussed below, existing standards are not enforced.

Note that the manufacturer is not required under federal pesticide law to show the "essentiality" of introducing yet another toxin into our homes, food or workplace. We are terribly concerned about a knee-jerk chemical response to pest problems when there often exist alternatives which are safer, less costly, and let me stress, more effective. For example, the Congressional Office of Technology Assessment, in a 1980 report, said an IPM approach, which utilizes a mixture of pesticides, natural predators and biological controls, can for major U.S. crops, "reduce pesticide (use) up to 75%, reduce preharvest pest-caused losses by 50% and reduce the total pest control costs by a significant amount."

The fact is, the public is faced with an increasing number of pesticide products on the market. From 1950 to 1970, overall pesticide production increased from 200,000 pounds to 1.4 billion pounds.¹ For the public to be concerned about the safe use of these products is natural. For Congress to ensure that these products are safe is imperative.

Communities that no longer have safe drinking water because their groundwater is contaminated with pesticides do not accept

continued Congressional inaction in this area. Neither do people in towns where herbicides, once used in Vietnam, drift. Neither do people consuming beef or fish that show suprisingly high levels of dioxin, perhaps the most deadly chemical contaminant known to the human race. Neither do millions of homeowners across this land who, given the construction of their homes, may have inadvertently poisoned their families when treating for termites. Neither do farmers and farmworkers of our country who go to bed sick and suffer chronic health problems associated with pesticides. Neither do unborn and newborn children whose exposure to contaminants jeopardizes their future health.

The numbers of people, the numbers of communities and the number of problems add up. The problems are not new. There are just a growing number annually. As time passes, there is yet additional documentation which indicates that these problems reflect a law and a regulatory control program that is not working.

Our overriding concern, then, relates to whether the public and workers of our country and those receiving products produced in the U.S. and sold outside our borders, are adequately protected from exposure to dangerous, potentially life-threatening, pesticides. The answer, members of the Subcommittee, is a resounding no.

H.R. 3818

We believe that H.R. 3818, the Federal Insecticide, Fungicide and Rodenticide Reform Act, represents an important step toward improving the protections from pesticides that should be afforded

all Americans. At the same time, we believe the bill will enhance competition in the chemical industry, reversing some dangerous oligopolistic trends in the industry.

Rather than provide you with the kind of section-by-section analysis which is already available to the Subcommittee as printed in the August 4, 1983 Congressional Record, pages S11597-11600, we would like to present the overall themes of the bill which are extremely important.

Overall, H.R. 3818 seeks to assure:

- a more protective pesticide registration program at EPA by closing numerous loopholes in the current law which allow safety standards to be circumvented;
- improved protection for humans exposed to pesticides, with particular emphasis given to those handling chemicals, those working on the farm, children and pregnant women;
- adequate enforcement of federal law and legal remedies for those who have been damaged by pesticides by creating a private right of action or citizen suit provision;
- public participation in pesticide decision making at EPA so that all the facts can be brought to bear before a registration decision is made as well as after an application is granted;

- testing for product effectiveness to ensure that chemicals perform as the manufacturers claim, and;
- improved competition in the chemical industry by eliminating backdoor registrations which extend monopoly periods and by establishing cost sharing for data submitters.

Members of the Subcommittee, H.R. 3818 does not cripple EPA and state program functions as those who oppose this bill would have us believe. Yes, the bill does make it more difficult to market products that have not been fully tested for health and environmental effects. Yes, the bill does make it more difficult to market products in the U.S. that have not been registered by EPA. Yes, the bill does attempt to assure that products or product uses that have been cancelled by EPA or withdrawn by the manufacturer for health or environmental reasons do not find their way back on the market without new evidence on safety. Yes, the bill does require that those handling the most dangerous class of "restricted use" pesticides are actually trained to handle the material properly.

Neither EPA, nor the states will be crippled by H.R. 3818. To the contrary, the hands of those officials charged with protecting the public will be untied. We support H.R. 3818 because the provisions contained in the bill are proposed in the interest of protecting both users of hazardous substances and those involuntarily exposed through our water, air and food.

International Concerns, H.R. 3254

While H.R. 3818 includes a provision which would improve the U.S. notification system accompanying pesticide exports, the bill does not address the major issues that relate to U.S. export policy of hazardous, as well as suspended, cancelled, restricted and unregistered pesticide products. Another bill before the Subcommittee, entitled the Pesticide Import and Export Act of 1983, H.R. 3254, begins to address key issues in the export area.

We support provisions of this legislation which:

- improve communication between the U.S. and importing countries, especially in providing access to health and safety data used by EPA in making regulatory decisions on product registration;
- create an information system which provides data on what pesticide product is being exported, by whom, the nature and quantity of the material, its destination and uses, and;
- update acceptable levels of pesticide residues on imported food to assure for safety.

Recognizing that H.R. 3254 represents a step forward, we urge that the Subcommittee consider additional improvements in FIFRA which would eliminate a double standard of public and environmental protections, one set for the U.S. and another weaker standard for importing countries. In a recent June 24, 1983 letter

to the Chairman, the Latin American branch of the International Pesticide Action Network (PAN), after meeting in Mexico, wrote:

As you know, our countries are the recipients of many pesticides which, though produced in the U.S., have never been registered for use in the U.S., or have been cancelled or highly restricted by your government. The export of these pesticides creates serious life-threatening health and environmental effects in our countries. . .we urge you to eliminate the dangerous double standard of one set of rules for your domestic pesticide market and another for the rest of us who import U.S. pesticides.

We would be happy to work with the Subcommittee to develop a system of protection that recognizes the fact that we live in one world and, as a result, must work with groups like PAN Latin America and address global concerns that ultimately affect us all.

THE PESTICIDE PROBLEM IN REVIEW

The remainder of my testimony will provide the Subcommittee with some background material which forms the basis of our support for H.R. 3818 and other efforts to improve our national pesticide control law, FIFRA. First, I will outline the pesticide problem as we see it. Second, I will describe the current statutory and regulatory failure to control pesticides.

The need to improve federal pesticide law grows out of the long list of disturbing events which we attribute to pesticide use and misuse. IGNORING THESE SIGNALS NOW WILL ONLY COST OUR NATION MORE LATER.

We have seen crop damage, fish, bird and bee kills, contaminated drinking water, poisoned food, contaminated homes and sickness. At the same time, product effectiveness appears to be

waning and insect and weed resistance to these chemicals are on the rise. Insect resistance is reported in nearly 400 species and farmers are reporting weed resistance to herbicides.

Health

Just as EPA shut down its Pesticide Incident Monitoring System (PIMS), which tracked rates of poisonings and other pesticide-related problems, the only state with a reporting system of its own, California, saw a 27 percent increase in poisoning in 1982 and a 78 percent increase in the number of days poison victims required hospital care.

According to EPA estimates, a total of 45,000 people are treated for pesticide poisoning annually. The National Study of Hospital Admitted Pesticide Poisonings estimates 3,000 cases of hospital-admitted pesticide poisonings yearly with a 25 percent and 35 percent increase for farmers and farmworkers, respectively, over the last decade.³ A Medical University of South Carolina study concludes that for every hospital-admitted case a physician treats 15 office cases. We believe these figures to be extremely low due to the fact that there does not exist in this country a mandatory pesticide reporting system. In fact, we believe that actual harm attributed to pesticides to be closer to the figures presented by the U.S. Department of Health, Education, and Welfare in 1970: 800 persons killed and 800,000 injured annually as a result of pesticides.⁴

The chemical industry recognizes the health problems associ-

ated with pesticide use and misuse. At their annual meeting in 1980, the president of the National Agricultural Chemicals Association (NACA) said, "In my judgement, involuntary exposure (to pesticides) is becoming the central public health issue of the 1980's."

The January, 1981 report Chemical Hazards to Human Reproduction, issued by the Council on Environmental Quality, cites various studies of male and female workers exposed to pesticides. These studies report impotence, chromosome aberrations, infertility, miscarriages and other adverse effects on reproduction.

A University of Iowa study of farmers in that state found that six types of cancer pose greater risks to that population group than to city dwellers. According to the researchers, the cancer rate is an occupational hazard of farming not related to smoking.⁵

Pesticides are turning up in wildlife, milk and in the nation's groundwater in case after case. Recently, North Carolina, Montana, Hawaii, Wisconsin, New York, Maine, Florida and California have had to face questions of pesticide contamination of their food and water supply.

Economic and Social Costs

While the magnitude of health problems due to pesticide exposure grows, some say in epidemic proportions, many researchers are calling attention to the diminishing returns associated with chemical pest management. As mentioned above, pesticide resistance

has been reported in nearly 400 insect species. And while the response may be to increase the dosages and potency of the pesticides, insects appear to be fighting back with tremendous resiliency. Insecticide use has increased eleven-fold in the last thirty years, while crop loss due to insect resistance has doubled.

It has been estimated that it costs our nation \$135 million in losses to the honey bee industry due to poisoning and reduced pollination every year. All told, researchers have estimated that pesticides now cost our nation \$839 million annually in losses attributed to environmental and social costs. Preliminary results include: \$184 million in human pesticide poisonings; \$12 million in livestock losses; \$287 million in reduced natural enemies and pesticide resistance; \$135 million in honey bee poisonings and reduced pollination; \$70 million in losses of crops and trees; \$11 million in fish and wildlife losses, and \$140 million in miscellaneous losses such as government costs to respond to pesticide problems.⁶

FAILURE OF THE REGULATORY AND STATUTORY PESTICIDE CONTROLS

On the basis of the dimensions of health and environmental problems alone, Congress should move expeditiously to chart an improved program of public and environmental protection. However, the definition of the pesticide problem is far larger than

a discussion of the health, environmental and economic effects of pesticide use. A close look at EPA's pesticide program and limitations in our national pesticide law illustrate the need for immediate statutory remedies.

Lack of Health and Safety Data

Important information has recently been documented by a Staff Report on the EPA Pesticide Regulatory Program, produced by the House Agriculture Subcommittee on Department Operations, Research and Foreign Agriculture. One of the most serious findings of the report is the extent of missing health and safety data for pesticide products registered by the EPA.

EPA simply does not have data for most products' ability to cause cancer, genetic damage and birth defects. Using data from EPA's files, the Staff Report reveals discomfoting figures indicating:

- between 79 and 84 percent of the products on the market have not been adequately tested for their capacity to cause cancer;
- between 90 and 93 percent of the same products have not been adequately tested for their ability to cause genetic damage;
- between 60 and 70 percent have not been fully tested for their ability to cause birth defects, and;
- between 30 and 46 percent have not been fully tested for reproductive effects.⁷

Congress has been aware of this problem, to some extent, since 1980 when the U.S. General Accounting Office published its report, Delays and Unresolved Issues Plague New

Pesticide Protection Programs. The report states,

[A]ccording to EPA officials, key tests required under current EPA regulations have not been performed for many of the 514 registration standards pesticides. Included are long-term (up to 3 years) animal feeding studies which show whether a pesticide causes chronic effects, such as cancer or birth defects, in animals. An official told us that EPA needs the results of these tests to make even preliminary decisions concerning a pesticide's safety and whether it should be re-registered.⁸

Faulty Data

Furthermore, EPA, for years, has been accepting faulty health and environmental test data on pesticide products now on the market. One of the largest falsifiers of data, the Industrial Bio-Test Laboratories, Inc. (IBT), provided EPA with hundreds of chemical safety tests to support the registration of nearly 200 products. In a recently released report, EPA has verified that only 3 percent of the IBT data submitted in support of registration is valid.⁹ Unfortunately, IBT is not an anomaly. Investigative reports indicate widespread problems with testing laboratory practices.

Canada, faced with the same faulty data situation as the U.S., has banned or restricted 6 IBT chemicals while our country has taken no such action. In fact, EPA officials maintain that the law prohibits taking action similar to Canada without "valid evidence of risk, as opposed to a lack of information." As a result, products remain on the market with invalid tests sup-

porting their registration until such time as EPA can show environmental harm. To the contrary, the Director of the California Department of Food and Agriculture is required to cancel a pesticide registration when "the applicant has submitted inaccurate or incomplete information." [3 Cal. Admin. Code §2360(d)]

Lab Audit Program

EPA was apprised of the inadequacy of lab testing as early as 1976 in a scientific review of chronic rat studies for 23 pesticides. In a report to the Office of Pesticide Programs, Melvin Reuber, M.D. said, "There was inadequate presentation, tabulation and analysis of data and often there were insufficient data included to make an accurate analysis possible. . . .Data presented in several tables were misleading or distorted. . . .Confirmation of the summary data by examination of the raw data was not easy."¹⁰

Despite the extensive problems with lab practices and even though EPA has audited nearly 100 testing labs since it began its lab audit program in 1977, questionable lab practices continue. EPA lab audits indicate, for example, the following:

Bio/Dynamics - The audits revealed serious concerns about the reporting of tumors, the supervisory controls, the monitoring of environmental conditions and the timeliness of post-mortem examinations, among others.

Biosafety Research Laboratory - These studies were invalidated by agency reviews on the basis of unclear dose determination and lack of proper animal examinations.

Biospherics - Method evaluated is not adequate for regulatory purposes.¹¹

According to a report in the San Jose Mercury, March 6, 1983, "None of the most suspect labs has been audited again. And despite the questionable value of some of the studies, not one pesticide registration has been withdrawn."

The House Staff Report concludes, "Except for the IBT case (which occurred before the audit program began), there is no solid indication, however, that any decisive regulatory or enforcement actions have been taken as a result of the laboratory audit program."¹²

Conditional Registration

The federal pesticide control law allows "conditional registration" of new products even though the data base may not meet the requirements for registration because of faulty or missing data. In addition, registrants can bring a product to market with conditional status if it is similar to one registered prior to 1975 with much less stringent requirements. In the name of "fair play," the law allows similar or identical untested products on the market. What we see, then, is a proliferation of untested products with unknown risks. All EPA requires is that, "All registrants of like products will have to provide missing data at a time specified in the future."¹³

Special Local Need and Emergency Exemption Permits

Unbeknownst to the public, a pesticide may be in use under one of a number of increasing "special local need" or "emergency exemption" permits. In the four year period between 1978 and 1982, the issuance of emergency exemptions under the "specific," "crisis," and "other" categories rose from 149 in FY 1978 to 673 in FY 1982; a 352 percent increase. From FY 1976 to FY 1982, the number of "special local need" registrations issued jumped 1,216, from 440 to 1,656.

The concern about the rising numbers grows out of the Staff Report's and our own information about these types of registrations. According to the Staff Report,

Pesticide registrations granted through Section 18 ("emergency exemption and 24(c) ("special local need") almost always entail significantly less complete and rigorous data requirements and scientific reviews.

Possible serious adverse effects on the environment and wildlife may occur as a result of uses registered under Section 18 and 24(c) during the sometimes extended period during which EPA analyzes the potential impacts associated with pending Section 3 applications for similar uses.

A study released last week by the Rural Advancement Fund of the National Sharecroppers Fund outlines the dramatic nature of the problem. Using a sample of 2,089 special local need (SLN) registrations for 25 states (79 percent of all SLNs granted in 1981-1982), RAF/NSF found that:

- more than 40 percent of all SLN pesticides

registered in the past two years contain chemicals registered on the basis of invalid or fraudulent tests conducted by IBT. For example, IBT conducted the safety tests for the three most widely used SLN pesticides (Furadan, Sencor, Paraquat). These products received a total of 361 SLNs in 25 states in 1981-82.

- a majority of the SLN registrations were issued for major crop use over a wide geographic area. More than 60 percent of all SLNs were issued for use on ten major crops.
- 90 percent of the registrations are obtained by chemical manufacturers. Five companies received 46 percent of all SLNs in 1981-82.¹⁴

Tolerances and Food and Feed Products

The 1980 GAO report, Delays and Unresolved Issues Plague New Pesticide Protection Program, indicates that there exists a severe deficiency in the tolerance setting program at EPA. The report reads,

Our 1975 report to Congress stated that the public is exposed daily to many pesticides which are not supported by animal and environmental safety studies. The situation has not improved. During our current review, an EPA official told us that the basis for many tolerances granted by the Food and Drug Administration is still obscure. According to the official, little, if any, documentation exists explaining how or why these tolerances were granted. Additionally,

the Assistant Administrator for Pesticides and Toxic Substances stated that not much difference exists between the present condition of EPA's test data files and those that existed at the time of our 1975 report.¹⁵

Furthermore, many of the chemicals registered with IBT data have received food tolerance levels based on invalid information which has not been replaced with valid tests. As a result, the Agency offers the public no assurance that pesticide residue levels set for hundreds of products do not pose a health risk.

Despite the fact that the fungicide Captan was under review for exceeding risk criteria, including potential mutagenic effects, and was known to have been registered with IBT data, EPA, in 1981, modified a tolerance to allow corn seed coated with the chemical to be fed to hogs and beef cattle destined for the American dinner table.

Indoor Air Pollution

The use of insecticides chlordane, aldrin and lindane (all belonging to a class of pesticides called organochlorines, which includes DDT) for termite control has attracted a lot of public attention because of the widespread contamination of possibly millions of homes. This occurs despite the fact that these chemicals have limited uses. Many exposed to small levels of these chemicals have suffered headaches, muscle aches, nausea, sleeplessness and excitability. More severe illnesses, such as convulsions, loss of consciousness, disorientation, person-

ality changes, psychic disturbances, loss of memory and a variety of blood diseases , are associated with high exposure levels. It is not uncommon for those in a contaminated home to live with a constant fear of the long term chemical effects.

In the case of chlordane, the National Academy of Sciences has recommended a "safe" level to be no more than five micrograms per cubic meter of air. Chlordane has caused cancer in the liver of mice and is a suspected human carcinogen.

However, no chlordane or other organochlorine residual levels in homes are currently set to protect the public health. In a January 17, 1983 letter explaining federal policy, former Deputy EPA Administrator, John Hernandez, said the setting of maximum residual levels or tolerances for pesticides with indoor uses is outside the Agency's legal authority. He states, "Neither the Federal Food, Drug and Cosmetic Act, the FIFRA, nor any other pertinent statutes, provide for setting tolerances for residues of pesticides in air or on surfaces in buildings."

When federal law and EPA have been negligent, those damaged by pesticides are forced to seek after-the-fact restitution. On a case by case basis we are beginning to see a system of control set up locally which should be afforded the general public rather than established through costly litigation. A judge in Los Angeles, California, after ruling against a local extermination company, ordered a detailed training program for pest applicators and notice to all future customers of the

type of chemical being utilized, the restrictions on application, type of symptoms caused by overexposure and telephone numbers for assistance should a problem arise.

Product Efficacy Information is Lacking

Beyond questions of safety supporting a pesticide product's registration, the pesticide user and the public have no real assurance that the product will perform as the manufacturers claim.

EPA explains efficacy requirements under FIFRA in the Federal Register of November 24, 1982 where the Agency proposes to further reduce the efficacy data required for registration.

Those products for which an efficacy data requirement was continued in 1979 were products which, if they lack efficacy, could potentially have significant public health effects, such as mosquito control products, rodenticides, certain other invertebrate and vertebrate control agents, and antimicrobial products. The Agency now believes that because many of the "public health" use patterns identified at the time are more of an aesthetic and nuisance problem than one of public health and are in any case adequately covered by other regulatory mechanisms offering assurance that the products are efficacious, and because the efficacy of products for other of these uses are adequately discernible by the user, marketing of inefficacious products is unlikely.

The Agency is proposing to extend its current waiver to efficacy data for all uses of pesticides except those where control cannot reasonably be observed or determined by the user and lack of control is a clear adverse health effect.¹⁶

EPA, under FIFRA, has waived most efficacy data believing that users are protected since "pesticide producers are aware that they are potentially subject to damage suits by the user

community if their products prove ineffective in actual use." However, this kind of statement does not provide much consolation for farmers like those in Kennewick, Washington, who, after investing in herbicides they allege to be inefficacious, are now seeking legal action against some chemical manufacturers.

In addition to the potential economic harm suffered by farmers, Dr. Stephen Frantz, a public health official with the New York State Department of Health, says that the consequences are of public health significance, but the effects are generally of a chronic nature rather than acute." Dr. Frantz continues,

There have been problems with efficacy of rodenticides as well as other products as evidenced by EPA's own testing laboratory at Beltsville (D. Peacock and S. Palmateer 1979, "Comparison of EPA Animal Biology Laboratory and Company Laboratory Efficacy Data for Federally Registered Rat and Mouse Baits"). Most products passed by companies failed when tested by EPA for registration purposes.¹⁷

Poor Training of Pesticide Applicators

The July 1, 1983 GAO review of the joint federal-state program for certifying and training individuals to apply pesticides indicates that "certification examinations do not fully conform to the Federal requirements and as a result do not provide assurance of an individual's competency."¹⁸ The pesticide training and certification program is an important program from the standpoint of numbers alone. More than 1.5 million individuals have been certified since the program's inception in 1978. The program becomes more important when we consider the problems

associated with over application, lack of safety precautions, and improper mixing, loading and storage of chemicals.

The GAO report notes that since 1976 the EPA's Region V office has not performed any substantive reviews of Illinois and Minnesota commercial applicator examinations "to ensure compliance with Federal standards." Officials admit that their twice a year reviews are "superficial at best."

Beyond not ensuring examination compliance, the report states that EPA "has not completely reviewed test quality despite questioning some state examinations." In fact, GAO found that many test questions are self-evident to people without any pest control knowledge, such as one true-false question which asks if insecticides are used for insect control. In conclusion, GAO says, "Specific criteria to regional offices have generally not assessed state certification tests for compliance with Federal requirements and adequacy for demonstrating competency because they were never provided with criteria for doing so."¹⁹

In addition to what can be characterized as inadequate training for those handling toxic chemicals, the federal law requires no proof of certification to purchase the most restricted class of pesticides, the restricted use category. Moreover, a clear loophole in the law allows untrained people to apply restricted use pesticides "under the supervision" of certified applicators. This clause is not defined and clearly not enforced.

The GAO report stresses that states, which carry out the federal training program, are not addressing major pesticide misuse problems because they "are not routinely and systematically gathering, analyzing and summarizing pesticide misuse information such as the number and type of misuse violations, the underlying causes of misuse, the circumstances surrounding the misuse and the types of violators."²⁰

Poor Enforcement of the Law

From an enforcement perspective, an October, 1981 GAO report, entitled Stronger Enforcement Needed Against the Misuse of Pesticides, suggests that the public and the environment are not protected from pesticide misuse because EPA and state enforcement programs exhibit the following characteristics:

- Many enforcement actions are questionable or inconsistent;
- Some cases are poorly investigated;
- Some (state) lead agencies often do not share EPA enforcement philosophy, and;
- Most States lack the ability to impose civil penalties.²¹

A comparison with the enforcement of other federal laws is very instructive. During Fiscal Year 1981, EPA assessed only \$123,473 in civil penalties under FIFRA. In comparison, under the Clean Water Act nearly \$3 million in civil penalties were assessed and over \$9 million in civil penalties were assessed under the Clean Air Act. In addition, cases

referred to the Department of Justice under FIFRA fall far below referrals under the Clean Air Act.

CONCLUSIONS

We appear here today on behalf of the thousands of individuals who have fallen victim to a system of pesticide control that is not working. These are people who face exposure problems that are frustrating. They seek answers and find none. They call government agencies for assistance and tell us that they find little satisfaction.

These are the same people who have been told that most of what we have learned about chemicals in recent years was not known when the chemicals were first introduced. We have been told this about the chemical contaminant dioxin, although early 1965 industry memos have since refuted early unequivocal claims of safety.

Mr. Chairman, you and this Subcommittee have an opportunity to lead our nation in establishing a more cautious national pesticide policy, to take precautions and to seek answers before problems occur. H.R. 3818 is a vehicle for important and necessary changes. The Subcommittee can choose the responsible course of moving H.R. 3818 through the legislative process or choose to tell another generation that we just did not know.

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- ³U.S. Environmental Protection Agency, National Study of Hospital Admitted Pesticide Poisonings, 1976.
- ⁴Senate Report No. 91-1282, 91st Congress, 2nd Session; reprinted in U.S. Code Cong. and Adm. News (1970), pp. 5179-5180.
- ⁵Leon Burmeister, "Cancer Mortality in Iowa Farmers, 1971-78," JNCI, Vol. 66, No. 3, March, 1981, pp. 461-464.
- ⁶David Pimentel, et. al., "Environmental and Social Costs of Pesticides: A Preliminary Assessment," Copenhagen: OIKOS, 34: 126-140 (1980), p. 135.
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- ⁸U.S. General Accounting Office, Delays and Unresolved Issues Plague New Pesticide Protection Programs, CED-80-32, February, 15, 1980, p. 15.
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- ¹¹U.S. Environmental Protection Agency, "Health Effects Data Quality Status Report," October 19, 1979, and Stephen Barlas, "EPA Slow to Clean Up Laboratories That Cheat," San Jose Mercury, March 6, 1983.

- ¹² Staff Report, p. 204.
- ¹³ Edwin L. Johnson, Director, Office of Pesticide Programs, U.S. Environmental Protection Agency, Testimony before the Subcommittee on Agriculture, Research and General Legislation, Committee on Agriculture, Nutrition and Forestry, U.S. Senate, 98th Cong., 1st Session, May 24, 1983, p. 8.
- ¹⁴ Allen Spalt, A Report on "Special Local Need" Pesticide Registrations, Rural Advancement Fund of the National Sharecroppers Fund, July 27, 1983.
- ¹⁵ Delays and Unresolved Issues Plague New Pesticide Protection Programs, p. 19.
- ¹⁶ 47 FR 53196, Pesticide Registration; Proposed Data Requirements, November 24, 1982.
- ¹⁷ Dr. Stephen Frantz, Letter to EPA dated May 11, 1983 re. 40 CFR 158, Pesticide Registration; Proposed Data Requirements, pp. 1-2.
- ¹⁸ U.S. General Accounting Office, Better Coordination Is Needed Between Pesticide Misuse Enforcement Programs and Programs For Certifying and Training Individuals To Apply Pesticides, RCED-83-169, July 1, 1983, p. 1.
- ¹⁹ Ibid., pp. 11-12.
- ²⁰ Ibid., p. 7.
- ²¹ U.S. General Accounting Office, Stronger Enforcement Needed Against the Misuse of Pesticides, CED-82-5, October 15, 1981, p. ii.

National Coalition Against the Misuse of Pesticides

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National Groups Endorsing

The Federal Insecticide, Fungicide and Rodenticide

Reform Act

S. 1774 and H.R. 3818

American Public Health Association
 Center for Science in the Public Interest
 Consumer Federation of America
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 Farmworker Justice Fund
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 National Coalition Against the Misuse of Pesticides
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 Natural Resources Defense Council
 Rachel Carson Council
 Rural Advancement Fund
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 Environmental Defense Fund
 Public Voice for Food and Health Policy
 American Federation of State, County and Municipal
 Employees (AFSCME)
 National Audubon Society
 Conference on Alternative State and Local Policies
 Environmental Task Force

This list is periodically updated.

TESTIMONY
OF
ROBERT M. RUSSELL
ORKIN PEST CONTROL
ATLANTA, GEORGIA

I am Robert M. Russell of Orkin Pest Control. Our company is the world's largest in structural pest control. We operate in 43 states in this country; we employ 5,000 people; we serve over a million customers. We offer these comments for our company, for all other conscientious users of pesticides, and in behalf of our employees and customers.

We are extremely proud of the safety and accomplishment of our pest control operations. In these we contribute to the protection of food, fiber, and structure in our country. For over 80 years our company has operated with an outstanding record of safety both to our employees and to our customers. This service has been within the established structure of our industry and in keeping with both state and federal laws of our country. We supported FIFRA when it was amended for application control in 1972 and we still do. We believe it has accomplished as designed by the Congress and as administered by EPA and our states.

We are, therefore, extremely concerned that its thrust and balance of benefit-risk are seriously jeopardized by this Reform Act.

There are many areas of concern to us. As a member of the National Pest Control Association, we are one of the thirty-three associations which expressed opinion and concern in our September 20, 1983 letter to the Honorable George E. Brown, Subcommittee Chairman, and to the members of the Subcommittee. As pointed out, any major action at this time seems inappropriate. First, the new Administrator of EPA and his staff deserves the courtesy of opportunity to review and to adopt a position. Second, the pending legal action between Monsanto vs. EPA awaits Supreme Court review. Any changes now proposed could be impacted beyond recognition.

Of particular concern to us is the provision on page 2 of HR 3818 to eliminate the supervision of restricted-use pesticides by a certified applicator. Supervision would be lessened for the Reform Act would require all applicators of restricted-use pesticides to be certified. This major change strikes at the foundation of our structural pest control industry. We are a relatively small industry in size, applying approximately 5% of the pesticides used in this country. Our industry is built as are most all service industries, on a competent and trained individual working on his own. This technician needs certain knowledge and physical skills. If this technician becomes certified, he will gain a certain control of his work position. To replace him for cause we must have available a replacement with certification credentials. Thus, our ability to supervise is lessened by the necessity of meeting an external requirement. Job performance will be reduced accordingly.

His supervisor, a certified applicator who is now qualified by state test, requires an entirely different and much more comprehensive range of knowledge. This supervisor can also perform competently with fewer physical skills. Thus, the two functions are entirely separate. We, therefore, see the provision to combine supervision and application as a naive and uninformed position. To require passage of an examination does not assure competence in a field. Such competence is acquired through training and supervision provided by a responsible employer. This provision to require certification for pesticide application would, therefore, be hurtful rather than helpful to the safe and efficient performance of our industry.

This question has been carefully considered by our own industry. In seeking always for a greater efficiency and an improved safety, our National Pest Control Association reviewed this matter most carefully in 1980. As there are many subtle nuances which such a consideration raises, and so the Committee may take advantage of this comprehensive study, it is included as an attachment to this testimony. To attempt to combine supervision and application would dramatically and damagingly impact our structural pest control industry in the following areas: control of employees; efficiency of operation; increased cost to industry; increased cost to government; hence, increased cost to the consuming public.

As there is no demonstrated need for this drastic realignment, we ask that this section be deleted. To force a person at one performance level to take an examination at a higher knowledge level is self-defeating. Both for the industry and for the employee whose livelihood may be jeopardized by failure of such an examination. Most of these technicians are competent in their functions. Let us not inflict upon them an academic standard that may well place their very job in jeopardy and which brings no added benefit to our industry.

Our industry is now working with state officials for improved training and better supervision. These functions can help us to maintain and to improve performance and we are willing to utilize our energies and abilities in this positive direction.

An omission from this offering is, in our opinion, one of the most needed reforms. This is the question of maintaining authority to regulate pesticides at the state level. There is legislative history from Public Law 92-516, October 21, 1972, indicating a congressional intent that this authority would be only at the state level, and not with any of its political subdivisions. Though this intent seems clear, there is no express prohibition in the law.

During the 1980's, there have been attempts by various political subdivisions of states to get involved in the process of regulating the sale or use of pesticides or requesting generation of data. These attempts now seem to be spreading rapidly. Most are very narrow in scope and increase the difficulties of performing correctly. Before this problem spreads to other political subdivisions, the statute needs to be clarified to say that "a state, but not political subdivisions thereof, may regulate sale or use of pesticides or require generation of data."

The limitation on substate authority to regulate pesticides was recognized in 1980 by the Attorney General of Massachusetts in disapproving proposed by-laws of the Town of Wendell which attempted to regulate pesticides. In disapproving the by-laws, he concluded in part:

"The Federal Environmental Protection Agency in adopting regulations implementing the Federal act commented on the state agency administering the state plan as follows: 'It is not the intention of the Act or these regulations to authorize political subdivisions below the State level to further regulate pesticides. Federal Register, Vol. 40, No. 49, Wednesday, March 12, 1975, at page 11700. The comments pertained to 40 CFR 171.7(a).'"

Similarly, in New York, ordinances adopted by a municipality regulating pesticides have been held invalid on the grounds that either the federal law or state law, which were not in harmony with the regulations, preempted the field. Long Island Pest Control Association, Inc. et al v. The Town of Huntington, 341 N.Y.S. 2d 93 (1973). Affirmed, 351 N.Y.S. 2d 945 (1974).

Similarly, there is an action in California reserving this right to the state. People of the State of California ex rel. George Deukmejian, Attorney General v. County of Mendocino, et al. Proponents of the Initiative et al Sierra Club et al Intervenors and Appellants. Presently on appeal...

"Finally, if California law is not construed as preempting local regulation in this field, the State regulatory scheme might be invalid under Federal law. The decision of the Trial Court was correct and should be upheld."

On September 15, 1982, the Senate Committee on Agriculture, Nutrition and Forestry passed a compromise S. 2620 containing the Hayakawa

language on 24(a) dealing with "a state, but not a political subdivision..." Unfortunately, this provision died when the bill was not taken up on the Senate floor.

During the 97th Congress, there was considerable broad-based support for this change in section 24(a), including the support of the State of California. This problem exists today and threatens to spread to other political subdivisions having little understanding of the structure of the pesticide industry or ramifications of the attempted regulations. Only in exceptional cases such as major cities is there competent pesticide expertise below the state level. We believe that the statute ought to reflect the congressional intent that political subdivisions below the state level should not regulate the sale or use of pesticides.

The Reform Act seems almost a compulsion to "do something now." We seriously question that this is the correct time to proceed. We hope the Subcommittee, in its usual wisdom, will permit the Agency and its new direction to review and formulate its own policies. There is the further consideration of the legal action now pending which could change or distort any new FIFRA legislation. When demonstrated need and appropriate data is presented proving that FIFRA needs adjustment, we feel sure that all of interest and involvement will be willing to review and amend as needed. Until that time, please, and in the words of the old farmer, "If it ain't broke, don't fix it!"

Attachment: NPCA Policy Statement

NATIONAL PEST CONTROL ASSOCIATION, Inc.
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protecting man's health and property

POLICY STATEMENT

ON

MANDATORY CERTIFICATION OF PEST CONTROL SERVICE TECHNICIANS

April 17, 1980

National Pest Control Association^{*}

POLICY ON MANDATORY CERTIFICATION OF PEST CONTROL SERVICE TECHNICIANS

Statement of the Problem

Authority for regulation of pesticide use was given to the U. S. Environmental Protection Agency (EPA) by the amendments to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) adopted in Public Law 92-516 on October 21, 1972. Additional amendments to this law were adopted in 1975 and in 1978. Under the current provisions of the law, EPA has the responsibility to approve state plans that meet the EPA criteria for regulating the use of restricted use pesticides and for certification of commercial and private applicators of such pesticides. If a satisfactory state plan is not provided, EPA can provide, in consultation with the governor of the state, a federal certification program in that state.

Certified applicator is defined in FIFRA as "any individual who is certified in an EPA approved plan as authorized to use or supervise the use of any pesticide which is classified for restricted use."

FIFRA, Section 2(e)(4), also states that:

Unless otherwise prescribed on the label, a restricted pesticide is considered applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed even though such certified applicator is not physically present at the time and place the pesticide is applied.

Since adoption of the 1978 FIFRA amendments, some state pesticide regulatory officials have proposed adoption of regulations under their existing state law or by adoption of a new state pesticide law to require that all persons applying restricted use pesticides in the state be certified by the state pesticide regulatory agency. Such action, allegedly, would increase the competency

* Approved by NPCA Executive Board, April 17, 1980

of persons applying restricted use pesticides. Many state pesticide regulatory authorities agree with the industry owner/operators represented by the National Pest Control Association (NPCA) that proposals for expansion of the certified applicator program beyond that defined in the current FIFRA are not necessary and likely to be counterproductive.

Applicable Law

FIFRA, as amended, September 30, 1978 (PL 95-396)

Section 2, (a) Definitions - Certified Applicator, Etc.

Section 4, Use of Restricted Use Pesticides; Certified Applicators

(a) (1) and (2) Certification Procedure, Federal and State

Analysis

In the early 1970's NPCA supported the legislation which gave the EPA the authority to regulate use of pesticides. The Association actively supported EPA approved programs of certification of persons who supervise service technicians in applying pesticides classified by EPA for "restricted use". NPCA continues to support federally regulated state programs for certification of supervisors of pest control technicians applying restricted use pesticides. NPCA is opposed to expanding state programs to require mandatory certification of all persons applying restricted pesticides when under the direction of a certified operator.

We offer the following reasons why mandatory service technician certification is not good for the structural pest control industry, the government, and for the general public:

1. NO DEMONSTRATED NEED

The absence of need for service technician certification is supported by the following facts:

1. NO DEMONSTRATED NEED (continued)

a) The U.S. Congress recognized it is not needed

When FIFRA was amended in 1972, Congress considered the certification of all service technicians who apply pesticides. They wisely avoided adoption of that requirement. This is clearly set forth in Section 2.(e)(4) of the 1978 FIFRA Amendments cited on page one.

b) The trend in poisonings does not support the need

EPA records of pesticide poisonings throughout the United States, 1971-76, indicate the annual number of such poisoning incidents remain stable (900-1000) despite increases in the population and volume of pesticides used. Almost all pesticide poisoning deaths occurring in the Nation during 1973 and 1974 were found to be self-inflicted or homicidal in nature.* A 1979 review of pesticide exposure incidents (occupational and non-occupational) reported by physicians in California over a three-year period (1976, 1977, and 1978) found only 51 such cases out of 378,810 termiticide applications by structural pest control operators -- .013% (Source: California Structural Pest Control Board; California Department of Food and Agriculture). In the state of Louisiana, structural pest control operators estimate they provided in excess of 600,000 pesticide applications in 1979. For the same year three cases of pesticide poisoning have been reported to the Louisiana Structural Pest Control Commission. Only one of these poisoning cases resulted from misuse of pesticides by industry people. (Source: Louisiana Structural Pest Control Commission).

* W. J. Hayes and W. K. Vaughn, "Mortality from Pesticides in the United States in 1973 and 1974", Toxicology and Applied Pharmacology, Vol 42, Academic Press, Inc., 1977

1. NO DEMONSTRATED NEED (continued).

c) More government testing will not increase safety

Certification does not assure a more competent performance. Based on Department of Labor apprenticeship experience, the best quality and safest work performance occurs when information on how to do a job is coupled with on-the-job training under the direction of knowledgeable and experienced personnel.

Continuous update through training or competency testing for certified pest control supervisors is required by EPA regulations for Section 4 of FIFRA. Presently, the certified supervisors transfer new technology to service technicians through on-the-job application. Section 2(e) of FIFRA places responsibility on the certified supervisor to ensure that the applicators of restricted use pesticides under his supervision are competent. The overwhelming percentage (over 95%) of pesticide applications by the structural pest control industry are "general use" pesticides, the same products available to the general public and considered relatively non-hazardous when used by people who may not bother to read the label. The members of this industry utilize their knowledge of pests and their experience with a diversity of control methods rather than depend primarily upon "restricted use" pesticides.

2. REDUCES INDUSTRY EFFICIENCY AND INCREASES INDUSTRY COSTS

A government requirement that all pest control applicators be certified through government administered training and testing (in contrast to voluntary action) can be expected to have the following adverse effects on this industry's capacity to provide essential services safely and economically to all sectors of the public.

2. REDUCES INDUSTRY EFFICIENCY AND INCREASES INDUSTRY COSTS (continued)

- a) There will be a loss in effective control of the pest control route (customer services at regular intervals)

Some states do not differentiate certification on use of restricted use pesticides or general use pesticides. In these states all commercial applicators must work under supervision of a certified applicator. Under mandatory certification, the service technician will hold the certification for a particular route. If he is not available for any reason, for any period, there will not likely be another certified applicator available to service the customers on that route. With the current certified supervisor system, more responsibility and control is in the hands of the owner/operator. The risk of legal liability encourages the owner/operator to provide responsible application of all pesticides including those that are on the restricted use list.

- b) A reserve labor pool is required that would be basically non-productive in a stand-by capacity. Also, time away from work while attending required certification courses takes the person away from productive service. Costs for attending required state training or testing programs in some states presently exceed \$300 per person for travel, housing, food, registrations and pay for non-productive time. The added cost burden from a back-up labor pool does not contribute to the efficiency of the business. The additional nonproductive cost is not only for personnel but also for costs of vehicle insurance, payroll burden, equipment and related expenses. With increases in cost from these nonproductive expenses, the price of pest control services will be raised. This will mean increased difficulty for low income sector of the public, who have the greatest need, to afford such services. With every reduction in the purchase of pest

2. REDUCES INDUSTRY EFFICIENCY AND INCREASES INDUSTRY COSTS (continued)

control services by individuals, the community can expect larger numbers of uncontrolled infestations and the losses that result.

c) Certification imposes a record-keeping burden

Mandatory service technician certification would greatly magnify this administrative burden. At a time when there is a universal desire by both government and industry to reduce paperwork, the structural pest control industry, a large majority of which is small business, does not need additional paperwork that would be required of the owner/operators with mandatory service technician certification.

d) Written tests as part of certification process does not provide an accurate measure of a pest control technicians ability to perform competent pest control service

Some service technicians are not formally educated but learn their practices from observation and supervised, on-the-job training. Certification and recertification by examination, in contrast to demonstrated competency from work with skilled supervisors on-the-job, will handicap some competent service technicians in maintaining their livelihood and providing useful services to the public.

3. NOT COST EFFECTIVE TO GOVERNMENT AND THE TAXPAYERS

The necessary increase in governmental administration costs for mandatory certification of service technicians is likely to far outweigh the benefits claimed. Estimates from the field are that approximately one out of nine of the owners, managers, and applicators in the structural pest control industry are presently certified under one or more of the EPA approved programs. In order to achieve universal certification for all pesticide applicators the

3. NOT COST EFFECTIVE TO GOVERNMENT AND TAXPAYERS (continued)

governmental cost will increase considerably for expansion of training, certification, monitoring and enforcement. Further, the added cost can not be justified by any demonstrated improvement in pesticide use safety in the few areas which now require service technician certification.

Most states operating under a federal EPA approved pesticide control program (all but four states) do not at present have provisions in their plans for mandatory service technician certification. It is expected that in order for the states without such a provision to require it, they would need to apply to EPA for the existing plan to be changed. This will require additional costs by some states and the federal government in order to make the necessary changes in their plans to satisfy EPA funding requirements. Most, if not all, state certification and training programs are now partially if not fully supported by federal funds. The federal funds for this purpose are expected to be phased out. How many states are prepared to pay the required increase in costs for no measurable gain in pesticide use safety?

Mandatory certification for all applicators will increase the pest control industry's operating costs (recordkeeping, reporting, backup labor, et. al.), thus increasing the cost for services to the public. On cost effectiveness one may also wonder why this added restriction is proposed only for the structural pest control industry when private (farmer) applicators and custom applicators in the agricultural field apply far greater quantities of restricted use pesticides than do the structural applicators!

There is a related consequence from a government requirement for all applicators to be certified as competent by passing a test. The owner/operator would not be as free, because of the restricted labor pool of certified applicators, to base employ-

3. NOT COST EFFECTIVE TO GOVERNMENT AND TAXPAYERS (continued)

ment decisions on experience-demonstrated competence and productivity as is now possible under present certified supervisor operation. One natural consequence will be increased pressures for "raiding or pirating" of certified technicians, especially the more competent, from other pest control companies. Currently most states have certification criteria that includes from one to four years of work experience. Thus, if these experience criteria are used in mandatory service technician certification (and we believe the experience criteria are not arbitrary), a new man could not be productive in application of all pesticides for one to four years after he was hired. The result from this process will be higher costs to the public for pest control with a strong possibility of a reduction rather than an increase in quality of the work performed.

Summary

Based on our analysis of the objectives for a certification program for all applicators of restricted use pesticides, we believe that the present laws and regulations rightfully assess the ultimate responsibility for pesticide applications to the owner/operators of the pest control industry. The fragmentation of this responsibility by required certification of all commercial or employee personnel who apply pesticides would provide no discernable benefit to the public or to the industry that is not already available.

Recommendation

The National Pest Control Association recommends support for the current system of voluntary initiative for certification of personnel to apply restricted or general use pesticides. We recommend opposition to either federal or state regulations that would require pest control service technician certification.

STATEMENT
of
Edgar W. Duskin, Executive Vice President
Southern Agricultural Chemicals Association
For Presentation At
HEARING
(Scheduled for 6 October, 1983)
By
The Subcommittee on Department Operations, Research,
And Foreign Agriculture
Of
The Committee on Agriculture
United States House of Representatives
On
Proposed Changes To The Federal Insecticide, Fungicide, and
Rodenticide Act
And Other Material

Mr. Chairman, I am Edgar Duskin, Executive Vice President of the Southern Agricultural Chemicals Association. We have testified or made appearances at nearly all hearings concerning FIFRA since 1972. We have been a consistent voice for moderation, openness and compromise, both among factions within industry, as well as with elements representing sometimes differing points of view outside the industry. As you know our Association is an independent regional trade Association covering thirteen states in the South. We represent the views of a broad based membership of about 140 companies which manufacture, formulate and distribute agricultural pesticides in our region. Though our membership includes basic manufacturers as well as formulators and distributors, the primary thrust of our remarks presents the viewpoint of the formulator-distributor and some other member companies in the South which are not members of NACA.

For the most part our views closely parallel those expressed or to be expressed by the other representatives of our industry. The point to note is that we add to their testimony the weight of almost a hundred companies.

For the record I want to state that the Southern Agricultural Chemicals Association supports fully the statement expressed in the letter to the Chairman of the Agriculture Committee supported by 33 Associations dated 20 September, 1983, particularly that part which urges a simple extension of FIFRA. The time is not propitious to once again do major surgery on the act. In the light of several recent major court decisions with possible far reaching implications, everyone seems in a quandry as to what to do and most wisely are proceeding very cautiously, slowly, and deliberately. We concur in this approach. Until appeals run their course and the situation is clarified as to the legality of FIFRA data compensation schemes, it seems prudent not to make any more changes in the law, except in cases where indecision renders it unworkable.

As before, we strongly oppose any provisions such as those proposed for Section 16 of FIFRA which would allow the injunctive process to be mischievously misused in such a manner as to prohibit or render infeasible the production, sale, or use of registered pesticide products.

We look forward to the opportunity to present more detailed comments if desirable at future hearings or elsewhere.

1616 H Street, N.W. • Washington, D.C. 20006 • (202) 628-1566
 James B. Grant, *Executive Secretary*
 Stuart B. Hardy, *Assistant Executive Secretary*
 Gordon C. Miller, *Administrative Assistant*

October 4, 1983

RECEIVED

OCT 05 1983

WEBB FRANKLIN, M.C.

Honorable Webb Franklin
 Subcommittee on Department Operations,
 Research and Foreign Agriculture
 U.S. House of Representatives
 Washington, D.C. 20515

Dear Mr. Franklin:

We have learned that the Subcommittee will hold a hearing October 6 on two bills, H.R.3254 and H.R.3818, to amend the Federal Insecticide Fungicide and Rodenticide Act (FIFRA). The first of these bills, the Pesticide Import and Export Act (H.R.3254), does not affect state pesticide regulatory programs or authorities, and the Association has not taken a position on this bill.

However, the Association has carefully reviewed the provisions of H.R.3818 which would have a substantial and disruptive impact on state pesticide programs. Our position on this bill is stated in the enclosed policy resolution (PI-30) which I hereby transmit to you and the Subcommittee for your consideration.

The resolution, adopted unanimously during our 65th Annual Meeting last month, states the Association's strong opposition to H.R. 3818 in its present form. We are especially concerned about proposed changes in the emergency exemption process (Section 18) and in "special local need" registrations. Such changes would seriously interfere with the ability of states to respond quickly and effectively to special and emergency situations which frequently arise.

Moreover, the Association questions the need for any major overhaul of FIFRA at this time. We continue to believe that FIFRA is basically sound and workable. Many of the problems in

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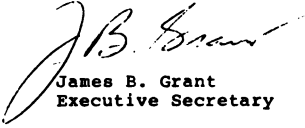
George M. Dunsmore
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program operation can and should be resolved administratively by EPA's new leadership team, if given the time and opportunity to affect necessary changes.

Therefore, the Association respectfully suggest that no substantive changes in FIFRA be undertaken at the present time. Meanwhile, we continue to support final enactment of the simple reauthorzation legislation (H.R.2785) which the Subcommittee approved and the House passed in May.

I appreciate this opportunity to bring the Association's views to the attention of the Subcommittee, and respectfully request that this letter and policy resolution PI-20 be included in the permanent hearing record.

Yours very truly,



James B. Grant
Executive Secretary

JBG/sk

Enclosure

NATIONAL ASSOCIATION OF STATE DEPARTMENTS OF AGRICULTURE
1616 H Street, N.W., Washington, D.C. 20006
1983

Policy No. PI-30

FIFRA LEGISLATION

The existing provisions of the Federal Insecticide, Fungicide and Rodenticide Act are workable and recent changes in the administration of EPA should further improve the ability of EPA and the states to proceed with technically sound and practical regulatory programs and obviate the necessity of any major overhaul of this statute.

However, Federal legislation (H.R. 3818 and S. 1774) has been introduced which would make drastic changes in the thrust of FIFRA. This legislation would seriously restrict the ability of states and EPA to appropriately determine pesticide benefits and risks in behalf of protecting the public health and environment. It would further undermine their ability to respond in a timely manner to the needs of pesticide users and to the legitimate requirements of the pesticide industry. Serious problems would result in many FIFRA programs, including applicator certification, special local need registrations, emergency exemptions, and the Section 3 registration programs.

RESOLVED, that the National Association of State Departments of Agriculture, meeting in Jackson, Mississippi, on September 21, 1983, strongly opposes H.R. 3818 and S. 1774 as introduced in the U. S. Congress.

TESTIMONY BY CONGRESSMAN CEC HEFTEL

SUBCOMMITTEE ON DEPARTMENT OPERATIONS,
RESEARCH, AND FOREIGN OPERATIONS

H.R. 3254, THE PESTICIDE IMPORT AND EXPORT ACT OF 1983

OCTOBER 6, 1983

Mr. Chairman, I regret that I cannot be here in person to testify on legislation I introduced, H.R. 3254, the Pesticide Import and Export Act of 1983. Nevertheless, I am grateful to you and the Committee for moving ahead so quickly on the consideration of legislation to strengthen our domestic and international pesticide laws.

The safe use of pesticides is an issue of increasing concern to us all. Our sophistication and advanced technological knowledge allow us to develop new and highly potent chemical products. Unfortunately, our understanding of the potential long-term and side effects of these products on our plantlife, environment, and ourselves does not keep pace with our ability to create such new products. Thus, we have gone to great lengths to regulate the use of such products on the food we grow. Nevertheless, problems we were not aware of when Congress first passed such protective laws continue to arise in this evolving

process. We must therefore fine tune our laws every so often to take into account these otherwise unanticipated problems.

This past year your subcommittee held several days of hearings on the operation of government pesticide control programs, the issues affecting exports of pesticides from the U.S., our programs to detect illegal pesticide residues on imported foods. We learned from those who participated in the hearings that there are increasing health and environmental problems worldwide which are directly linked to indiscreet pesticide use.

We know from documentation such as that in the General Accounting Office Report, "Better Regulation of Pesticide Exports and Pesticide Residues in Imported Food is Essential" that our government agencies responsible for monitoring pesticide residues on imported foods are not able to adequately monitor all such residues. We know from books like Circle of Poison: Pesticides and People in a Hungry World, that public awareness and concern about worldwide pesticide misuse is increasing. We know from FDA Compliance Reports that illegal pesticide residues are often found on commodities for which no tolerance level has been established.

The United States is among the world's largest importers of food. We demand that our fresh food products, whether imported or domestic, be perfect and blemish-free. Such quality can often only be achieved by the use of fertilizers and pesticides, particularly in areas where the soil has been overworked for centuries and never gets cold enough to kill bugs.

The Environmental Protection Agency knows exactly which pesticides are used in the United States: it knows what crops they are used on; it knows how much of a pesticide is used; and it knows what states use which pesticides. While we know exactly what residues to test for on domestically produced food, we have virtually no useful information on pesticide use abroad that allows us to make the same tests on foreign grown produce that sits alongside domestically produced food on our grocery shelves. The increasing amount of pesticides and pesticide compounds that are being shipped abroad from our country and the increasing evidence of illegal pesticide residues on imported foods can only lead me to believe that the dangers of pesticide misuse will get worse, not better.

It is for these reasons, Mr. Chairman, that I think it is now time for Congress to amend those portions of our pesticide laws that no longer protect us from the dangers of pesticide misuse. H.R. 3254 would do just that. This bill was drafted in response to the inadequacies in our current pesticide laws and is, I believe, a responsible and responsive approach to addressing the problem. - Attached to my testimony is a summary of the bill.

The thrust of this bill is to increase the content and the flow of information about pesticides which are exported from our country-- their ultimate destination and the food crops to which they will be applied. The EPA would be notified on a more regular and comprehensive basis of this information. This bill would require those countries using pesticides that are banned, available only for

restricted use, or otherwise never registered for use in our country to demonstrate their understanding of the dangers of such pesticides and that they know how to use and dispose of them. H.R. 3254 would also require our government agencies which are involved in pesticide regulation to share information among themselves.

The provisions in H.R. 3254 would not in any way hamper American export of pesticides or make it more difficult for American companies to compete in the worldwide pesticide market. Rather, the provisions in my bill will assure that we have a better ability to monitor imported food. They will assure that we are not undercutting our domestic laws by allowing two food products of different origin to sit side by side in the grocery store; one contaminated with illegal pesticide residues, the other free of potentially toxic substances. Our farmers are required to use safer, often more expensive pesticides, and it unfair that they should have to compete on such an inequitable basis. This legislation would also assure the world that America is a good trading partner, and that we do not view and treat the rest of the world as a dumping ground.

Mr. Chairman, as pesticide use around the world continues to increase, so do the dangers involved. Evidence accumulated over the past few years document the problems of such overuse. There have already been several major disasters overseas involving pesticide misuse, and I hope we act on this matter before our own citizens are also forced to pay the price of inadequate protection.

Again, Mr. Chairman, I applaud you and our colleagues on the committee for your interest in this serious matter, and I urge your favorable action on H.R. 3254. Thank you.

A BRIEF EXPLANATION OF THE "PESTICIDE IMPORT AND EXPORT ACT OF 1983"

Section 1 contains the title of the Act.

Section 2 amends section 1 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) by adding a new subsection specifying the types of information a pesticide producer must submit to the Administrator of EPA on pesticides manufactured in and exported from the United States. The amendment requires that information be submitted on the destination and nature of pesticide exports, as well as information on the foreign use of the pesticides, to the extent such information is available to the exporting company.

The amendment directs the Administrator of EPA to collaborate with the Secretary of State, Secretary of Agriculture, and the Commissioner of the Food and Drug Administration in identifying overseas pesticide use patterns on food crops exported to the United States. An annual report is required summarizing the information gathered under this paragraph, including a provision directing the Administrator to include any recommendations he may wish to offer Congress on improving the reliability and usefulness of the information received under this section and section 17 of FIFRA.

Section 7, paragraph (d), "Confidential Records and Information," is amended to include the information on pesticide exports obtained pursuant to the previous paragraph under the protections provided confidential information in section 10 of FIFRA. The amendment exempts from the protections of section 10 any information the Administrator determines must be disclosed in order to comply with the reporting requirement in the previous paragraph, although the Administrator is instructed to take steps to limit the disclosure of commercial information when such disclosure is not necessary to carry out the provisions of the Act.

Under current law, pesticide manufacturers are required to report annually to the EPA the pesticides currently in production, sold, and distributed during the past year. This information provides only imprecise information on pesticide exports. The specific information required in this amendment would greatly improve the Food and Drug Administration's ability to effectively monitor imported foodstuffs for the presence of pesticide residues. It would also assist EPA, the Department of State, other nations, and international organizations in fostering the safe use of pesticides in developing countries.

The provisions pertaining to the protections provided to data collected by the Administrator on pesticide exports are intended to strike a balance between the public's interest in having better information on global pesticide use patterns and the private sector's interest in retaining control over potentially valuable commercial information. (Elsewhere in this Act, a provision amending section 10 of FIFRA addresses the conditions governing the international exchange of information. The impact of the amendments in this section should be evaluated in conjunction with section 6 of this Act amending section 10 of FIFRA.)

Section 3 of this Act amends section 17 of FIFRA. Section 17(a) of the FIFRA statute addresses the conditions which must be met by a pesticide producer in the case of pesticides produced in the U.S. solely for export. In the case of a pesticide not registered in the U.S., current law requires the foreign purchaser to sign a statement acknowledging that the purchaser understands that the pesticide exported from the U.S. is not registered in the U.S.

This Act amends section 17(a)(2) by specifying in more detail the conditions governing application of the notification requirement. The amendment also expands the information which must be included in the notification statement sent to foreign purchasers. In addition to the fact that the pesticide is unregistered in the U.S., the amendment would require an official of the importing nation to also be informed of the nature and severity of any unreasonable adverse effects on the environment identified by the Administrator in the course of considering the regulatory status of the pesticide in the U.S. The notice would also alert the official of the importing nation to the availability, upon request, of regulatory and scientific documents on the pesticide, subject to the provisions of section 10.

Subparagraph (a) clarifies the conditions which must be met for a pesticide to be considered unregistered, under FIFRA, and hence subject to the notification requirement. The amendment states that a pesticide shall be subject to the notification requirements of this subsection if some or all uses of the pesticide, or formulations of the pesticide, have been:

(i) cancelled or denied on risk grounds. In nearly all cancellation actions taken by EPA to date, a few uses of the pesticide have been retained. Pesticides such as DBCP and 2,4,5-T are not currently subject to the notification provision under section 17(a) because some uses are still registered.

(ii) voluntarily withdrawn, provided that the Administrator determines that the pesticide would have been cancelled in the absence of a request by the pesticide manufacturer that some or all of the pesticide's registrations be withdrawn.

In these cases, the amendment specifies that the pesticide may be exported if appropriate officials of the government of the importing country have submitted to the Administrator of the EPA a request that such pesticide be exported to such country; disclosed to the Administrator the intended use of such pesticide in such country; and in the case of a pesticide used on a food crop exported to the U.S. in commercial quantities, informed the Administrator of any regulatory requirements governing the conditions of use of such pesticide in such country which might affect the nature and level of pesticide residues on commodities exported to the U.S.

The amendment also requires the Administrator to compile a list of the pesticide regulatory officials that should receive information under this section.

A new paragraph (3) is added to subsection (a). This paragraph requires that acutely toxic pesticides be included in a modified notification process. The amendment specifies that both the foreign purchaser and the appropriate regulatory official in the importing country shall be notified and must acknowledge understanding of the acute hazards associated with exposure to the pesticide. The acknowledgement statement shall include the steps that will be taken to assure that instructions for the safe use of the pesticide will be accessible, to the extent practicable, to the use of the pesticide.

The Administrator is authorized to share information, upon request, with other nations on any pesticide without regard to the country from which a pesticide may be produced and exported. The Administrator is also authorized to collaborate with the Secretaries of State and Agriculture in undertaking special assessments of pesticide use in foreign countries when such assistance is requested by a foreign government. The amendment defines the term "acutely

toxic," adapting the definition set by the risk criteria as specified in rule promulgated under FIFRA.

A provision amending subsection (c) directs the Administrator to foster use of pesticides in other countries the international exchange of information and through other steps the Administrator may consider necessary. The Statement is directed to pursue diplomatic efforts to obtain the agreement of exporting countries to regulate foreign pesticide sales.

Section 4 of the Act amends section 10 of FIFRA. The amendment would make the use of a temporary tolerance as part of an experimental use procedure covering pesticide residues on foodstuffs, unless the temporary tolerance was obtained in conjunction with a mental use permit including use of pesticides overseas.

Section 5 would amend section 17(b) of FIFRA by adding a new paragraph addressing the revocation of tolerances. The amendment would require the Administrator to revoke tolerances for residues associated with suspended or cancelled pesticides. In the case of a use of a pesticide that is voluntarily withdrawn, the Administrator may revoke a tolerance and a residue action level if the Administrator determines that the residue of the pesticide will unavoidably persist in the environment. The Administrator is directed to consider and minimize the adverse impacts of tolerance action competitiveness in world markets for agricultural production.

Section 6 of the Act would amend section 10 of FIFRA by adding a new subsection on international agreements. The amendment prohibits the Administrator from making available for public inspection pesticide information obtained from other country or international organization if:

(i) the Administrator obtained information under the conditions that the Administrator would not disclose the information;

(ii) the information is not otherwise available;

(iii) the government or international organization continues to demand that the information not be made for public inspection.

The amendment further would require EPA to disclose to foreign governments international organizations information obtained under this Act as long as the information is not included in a statement reached that includes assurances acceptable to the Administrator that the information will not be further disseminated without the consent of the Administrator. The information will not be used for any application for a pesticide registration, license, or permit in another country.

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NOT ADMITTED BY DIRECT OF COLUMBIA

October 6, 1983

The Honorable George E. Brown, Jr.
Chairman, Subcommittee on Department
Operations, Research and Foreign Agriculture
Committee on Agriculture
U.S. House of Representatives
Washington, D.C. 20515

Re: H.R. 3254

Dear Chairman Brown:

This statement in support of H.R. 3254, also known as the "Pesticide Import and Export Act of 1983", is submitted on behalf of the Florida Fruit & Vegetable Association (FFVA).

FFVA is a non-profit agricultural cooperative trade association which represents growers of a majority of the fruits and vegetables produced in the State of Florida.

Our members have been concerned for a long time about the problem of imported, chemically adulterated produce that flows into U.S. consumer markets each year. A recent GAO Report (Monitoring and Enforcing Food Safety -- An Overview of Past Studies, GAO/RCED-83-153, September 9, 1983), details the problems confronting U.S. agencies' maintaining control over adulterated imported food products. The report particularly highlights the difficulties involved with produce from Mexico and notes that "almost one third of the Mexican produce shipments found to contain violative pesticide residues ... entered U.S. commerce" in 1981 (Id. at 43). To the extent that this legislation will protect the American public from consuming potentially unsafe pesticide residues on imports, we urge your support.

FFVA believes that the proposed legislation is a

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reasonable attempt to address and shed light on this problem and urges the members of this Subcommittee to support this bill.

If we can be of any assistance to the members of this Subcommittee during their deliberations in this area of pesticide control please do not hesitate to contact the undersigned.

Sincerely yours,


John M. Himmelberg
Washington Counsel
Florida Fruit & Vegetable Association

JMH:bb

cc: Mr. James T. Duncan
Executive Vice President
and General Manager
Florida Fruit & Vegetable Association

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NOT ADMITTED IN DISTRICT OF COLUMBIA*

October 6, 1983

The Honorable George E. Brown, Jr.
 Chairman, Subcommittee on Department
 Operations, Research and Foreign Agriculture
 Committee on Agriculture
 U.S. House of Representatives
 Washington, D.C. 20515

Re: H.R. 3254

Dear Chairman Brown:

On behalf of the Florida Tomato Exchange (FTE) we thank you for this opportunity to make this statement of support for H.R. 3254, the "Pesticide Import and Export Act of 1983".

FTE is a non-profit cooperative association whose members are the producers and first-handlers of approximately 80% of the State of Florida's annual crop of fresh tomatoes.

The proposed legislation addresses a point that has long been a matter of concern to our members, namely the influx of impermissible toxic residues on imported produce.

The problem is a very serious one because the federal agencies charged with protecting our marketplace from contaminants can only function effectively if they know where to look for possibly toxic residues. At the present time they do not receive the information they need to determine which imported commodities have been grown using these selfsame U.S.-banned or heavily restricted chemicals. As a result, American consumers are unaware they are being subjected to a serious threat to their health. For example, an FDA field report on Vegetable Import Detentions (October 1982 through April 1983) underscores the fact that what we do know about

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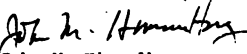
adulterated foreign produce represents a serious hazard to American consumers. The FDA reports over 180 shipments of Mexican produce had been denied entry into this country during this 7 month period. The majority of these detentions were for toxic levels of pesticide residues. These were only from those few shipments sampled under the current inspection policies.

This legislation is beneficial in that it will provide: more information of the uses of exported pesticides, a clearer picture of the monitoring tests performed by FDA, which we think presently are inadequate, and hopefully, safer applications of pesticides in foreign countries.

We urge the members of this Subcommittee to support H.R. 3254 and help remove this threat of unknowing contamination of our food supply by known hazardous chemicals.

If we can be of any assistance to you or the members of this Subcommittee as you consider the problems of imported toxic pesticide residues please do not hesitate to call upon us.

Sincerely yours,


 John M. Himmelberg
 Washington Counsel
 Florida Tomato Exchange

JMH:bb

cc: Mr. Wayne Hawkins
 Executive Vice President
 Florida Tomato Exchange

98TH CONGRESS
1ST SESSION

H. R. 3254

To protect the American public from consuming potentially unsafe pesticide residues on imported foodstuffs; to foster prudent and equitable regulatory requirements and standards for United States producers of agricultural commodities competing with producers in other countries in international and domestic markets; and to improve the international exchange of scientific information on the properties, safety, benefits, and risks of pesticide use.

IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 1983

Mr. HEFTTEL of Hawaii (for himself and Mr. BARNES) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To protect the American public from consuming potentially unsafe pesticide residues on imported foodstuffs; to foster prudent and equitable regulatory requirements and standards for United States producers of agricultural commodities competing with producers in other countries in international and domestic markets; and to improve the international exchange of scientific information on the properties, safety, benefits, and risks of pesticide use.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. This Act may be cited as the "Pesticide
4 Import and Export Act of 1983".

1 Sec. 2. (a) Section 7(c)(1) of the Federal Insecticide,
2 Fungicide, and Rodenticide Act (7 U.S.C. 136e(c)(1)) shall
3 amended by striking out "and" at the end of subparagraph
4 (B), by striking out the period and inserting "; and" at the
5 end of subparagraph (C), and by adding after subparagraph
6 (C) the following:

7 “(D) which he has exported during the past
8 year, and the destination of the exports, including
9 shipments of pesticide active ingredients or formu-
10 lated products to subsidiaries or other companies
11 engaged in a business relationship with the
12 producer.”.

13 (b) Section 7(c)(1) of such Act is further amended by
14 striking out the last sentence and inserting in lieu thereof the
15 following:

16 “The information required by this paragraph shall be
17 kept current and shall be submitted to the Administra-
18 tor annually as required under such regulations as the
19 Administrator may prescribe. The Administrator shall
20 require pursuant to subparagraph (D) of this paragraph,
21 to the extent practicable in light of the transshipment
22 of pesticides and the availability of this information to
23 the producer, information on the nature and quantities
24 of pesticides exported, the destination of the exported
pesticides, and the uses of the exported pesticides. The

1 Administrator shall cooperate and collaborate with the
2 Secretary of Agriculture, Secretary of State, and the
3 Commissioner of the Food and Drug Administration in
4 identifying overseas pesticide use patterns on food
5 crops exported to the United States. An annual report
6 shall be prepared by the Administrator for submission
7 to the Congress, and for release to the public and other
8 interested parties summarizing the information received
9 under this paragraph. The report shall include the
10 scope, frequency, and results of any pesticide residue
11 monitoring tests conducted by the Food and Drug Ad-
12 ministration and the United States Department of Ag-
13 riculture on food imported by the United States. The
14 report may include any recommendations the Adminis-
15 trator may wish to offer for improving the reliability
16 and usefulness of the information received under this
17 section and section 17 of this Act.”.

18 (c) Section 7(d) of such Act is amended to read as
19 follows:

20 “(d) **CONFIDENTIAL RECORDS AND INFORMATION.**—
21 Any information submitted to the Administrator pursuant to
22 subsection (c) other than the names of the pesticides or active
23 ingredients produced or used in producing pesticides pro-
24 duced, sold, distributed, or exported at an establishment shall
25 be considered confidential and shall be subject to the provi-

1 sions of section 10; except for that information the Adminis-
 2 trator determines is necessary for complying with the report-
 3 ing requirement in subsection (c)(1)(D). The Administrator
 4 shall take steps to limit the disclosure of commercial informa-
 5 tion as submitted by producers when such disclosure is not
 6 necessary to carry out the provisions of this section and sec-
 7 tion 17 of this Act.”.

8 SEC. 3. (a) Paragraph (2) of section 17(a) of the Federal
 9 Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.
 10 136o(a)(2)) is amended to read as follows:

11 “(2) in the case of any pesticide for which some
 12 or all uses, or formulations of which have been can-
 13 celed or denied on risk grounds under this Act; and in
 14 the case of any pesticide for which some or all uses, or
 15 formulations of which have been voluntarily with-
 16 drawn; the Administrator shall consider the pesticide
 17 canceled for the purposes of this section if the Adminis-
 18 trator determines that a use or uses of the pesticide
 19 would have been canceled in the absence of the volun-
 20 tary withdrawal of the registration under section
 21 6(a)(i), if the Administrator, before export and after
 22 consultation with the Department of State, and the
 23 Department of Agriculture, finds that—

24 “(A) appropriate officials of the government
 25 of the importing country have—

1 “(i) submitted a request to the Adminis-
2 tration that such pesticide be exported to
3 such country;

4 “(ii) disclosed to the Administrator the
5 intended use of such pesticide in such coun-
6 try; and

7 “(iii) in the case of a pesticide used on a
8 food crop exported to the United States in
9 commercial quantities, informed the Adminis-
10 trator of any regulatory requirements gov-
11 erning conditions of use of the pesticide in
12 the country which might affect the nature
13 and level of pesticide residues on commod-
14 ities exported to the United States including,
15 but not limited to, the nature and level of
16 pesticide residues allowed in the country, and
17 the nature and findings of any routine resi-
18 due testing done on the commodity prior to
19 export;

20 “(B) such officials acknowledge receipt of in-
21 formation specifying—

22 “(i) the fact that such pesticide is not
23 registered for use in the United States and
24 may not be sold in the United States under
25 this Act;

1 “(ii) the nature and estimated severity
 2 of any unreasonable adverse effects on man
 3 or the environment identified by the Admin-
 4 istrator during the course of considering the
 5 regulatory status of the pesticide in the
 6 United States; and

7 “(iii) the availability upon request from
 8 the Administrator of regulatory and scientific
 9 documents on the pesticide, subject to the
 10 provisions of section 10; and

11 “(C) the Administrator shall compile a list of
 12 foreign government pesticide regulatory officials
 13 or other appropriate regulatory officials, if any,
 14 and shall provide them, upon request, with infor-
 15 mation made available under this section; and”.

16 (b) Section 17(a) of such Act is amended by striking out
 17 “and” at the end of paragraph (1) and by inserting after
 18 paragraph (2) the following:

19 “(3) in the case of an acutely toxic pesticide, as
 20 defined herein, or a pesticide classified for restricted
 21 use under section 3(d) of this Act, if, prior to export,
 22 the foreign purchaser and the appropriate regulatory
 23 official, if any, in the importing country has signed a
 24 statement acknowledging an understanding of the acute
 25 hazards associated with exposure to the pesticide. The

1 acknowledgment statement shall include the steps that
2 will be taken to assure that appropriate instructions re-
3 garding the safe handling, use, and disposal of the pes-
4 ticide are contained on the label and will be accessible,
5 to the extent practicable, to the user of the pesticide.
6 In carrying out this section, the Administrator should take
7 whatever steps are prudent and necessary to make available
8 upon request to other nations, scientific and analytic informa-
9 tion in the possession of the agency on the properties of pesti-
10 cides regardless of the country in which the pesticide was
11 initially produced, subject to the provisions of section 10. The
12 Administrator may also, upon request and in cooperation
13 with the Secretary of State and the Secretary of Agriculture,
14 undertake special assessments of pesticide use in foreign
15 countries which may be requested by the foreign government
16 and considered necessary and advisable in order to further
17 the purposes of this Act. For the purposes of this paragraph,
18 acutely toxic means (A) has an acute dermal lethal dose of 40
19 milligram/kilogram or less as formulated; or (B) has an acute
20 dermal lethal dose of 6 gram/kilogram or less as diluted for
21 use in the form of a mist or spray; (C) has an inhalation lethal
22 concentration of 0.04 milligram/liter or less as formulated.”.

23 (c) Section 17(d) of such Act is amended by inserting at
24 the end thereof the following:

1 "Subject to the provisions of section 10, the Administrator
 2 shall foster the safe use of pesticides in other countries
 3 through the international exchange of information, and
 4 through other steps the Administrator may consider neces-
 5 sary to further the purposes of this Act. The Department of
 6 State should pursue diplomatic efforts to obtain cooperative
 7 agreements with other exporting countries to regulate their
 8 foreign pesticide sales. This action should be pursued on a
 9 regional and bilateral basis as well as through appropriate
 10 United Nations channels."

11 SEC. 4. Section 5(b) of the Federal Insecticide, Fungi-
 12 cide, and Rodenticide Act (7 U.S.C. 136c(b)) is amended by
 13 inserting before the period at the end thereof the following: "
 14 except that a temporary tolerance shall not apply to pesticide
 15 residues on imported foodstuffs unless the experimental use
 16 permit includes provisions for foreign use of the pesticide".

17 SEC. 5. Section 6 of the Federal Insecticide, Fungicide,
 18 and Rodenticide Act (7 U.S.C. 136d) is amended by redes-
 19 ignating subsection (f) as subsection (g) and by inserting after
 20 subsection (e) the following new subsection:

21 "(f) REVOCATION OF TOLERANCES.—

22 "(1) The Administrator shall revoke tolerances es-
 23 tablished under the provisions of the Federal Food,
 24 Drug, and Cosmetic Act when—

1 “(A) the uses of a pesticide associated with
2 the tolerances have been cancelled or suspended
3 under this section; or

4 “(B) in the case of a pesticide registration or
5 registration application voluntarily withdrawn, if
6 the Administrator determines that the tolerance is
7 no longer needed or supported by the available
8 scientific data.

9 “(2) The Administrator may establish a residue
10 action level at the time a tolerance is revoked for the
11 purpose of enforcing the provisions of the Federal
12 Food, Drug, and Cosmetic Act if the Administrator—

13 “(A) determines that residues of the pesticide
14 will unavoidably persist in the environment; and

15 “(B) makes a determination that such action
16 levels will not pose an unreasonable adverse effect
17 on man or the environment.

18 In establishing or revoking a tolerance, the Adminis-
19 trator shall take into account any probable impacts of
20 such actions on the competitiveness of agriculture pro-
21 duction in the United States in world and domestic
22 markets, with the goal of eliminating, to the extent
23 practicable inequitable burdens on United States pro-
24 ducers caused by pesticide regulatory actions and
25 standards established by different nations.”.

1 **SEC. 6. Section 10 of the Federal Insecticide, Fungi-**
2 **cide, and Rodenticide Act (7 U.S.C. 136h) is amended by**
3 **adding at the end thereof the following:**

4 **“(h) INTERNATIONAL AGREEMENTS.—Notwithstand-**
5 **ing any other provision of law—**

6 **“(1) The Administrator shall not make available**
7 **for public inspection any document or information con-**
8 **cerning pesticides if (A) the Administrator obtained the**
9 **document or information from the government of an-**
10 **other country (or from an international organization of**
11 **countries), (B) the government or international organi-**
12 **zation required the Administrator to agree not to dis-**
13 **close the document or information to the public as a**
14 **condition of furnishing it to the Administrator, (C) the**
15 **Administrator could not otherwise obtain the document**
16 **or information, and (D) the government or international**
17 **organization continues to demand that the document or**
18 **information not be made available for public inspection.**

19 **“(2) The Administrator may disclose information**
20 **obtained under this Act to the government of another**
21 **country or its agents (or to an international organiza-**
22 **tion of countries) only under the following conditions.**
23 **The information that may be so disclosed shall include**
24 **all information that may be publicly disclosed under**
25 **subsection (d)(1) of this section, and may also include**

1 any information described in subsection (d)(1)(A), (B),
2 or (C) of this section, if the Administrator determines
3 that such information is necessary for the evaluation of
4 the potential environmental effects of a pesticide. The
5 Administrator may make such disclosures if the Admin-
6 istrator executes an agreement with another country
7 which furnishes assurances acceptable to the Adminis-
8 trator that the government—

9 “(A) will not further disclose the information
10 without the consent of either the Administrator or
11 the submitter of the information; and

12 “(B) will not allow the information to be
13 used directly or indirectly to support any applica-
14 tion for, or decision to grant, a license, permit, or
15 other action which allows the production, sale, or
16 distribution of a pesticide under any country’s
17 laws. The Administrator shall provide notice to
18 affected persons and an opportunity for comment
19 prior to entering into any such agreement with
20 the government of another country. The Adminis-
21 trator shall provide notice to a data submitter of
22 the proposed transfer of data to a foreign govern-
23 ment under such an agreement. The Administra-
24 tor will not consent to public disclosures of infor-
25 mation by a foreign government under subpara-

1 graph (A) of this paragraph which would have the
2 effect of permitting disclosures of information that
3 is not permitted under this Act, or permitting dis-
4 closure under conditions that are less restrictive
5 than those permitted by this section and any regu-
6 lations promulgated thereunder.”.

98TH CONGRESS
1ST SESSION

H. R. 3818

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to better protect the environment and man from the hazards of pesticides, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 4, 1983

Mr. HARKIN (for himself, Mr. BROWN of California, Mr. HEFTEL of Hawaii, Mr. BEILSON, Mrs. BOXER, Mr. BERMAN, and Mrs. BURTON of California) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to better protect the environment and man from the hazards of pesticides, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Insecticide, Fun-
4 gicide, and Rodenticide Reform Act".

5 REFERENCES TO THE FEDERAL INSECTICIDE, FUNGICIDE,
6 AND RODENTICIDE ACT

7 SEC. 2. Except as otherwise specifically provided,
8 whenever in this Act an amendment or repeal is expressed in

1 terms of an amendment to, or repeal of, a section or other
 2 provision, the reference shall be considered to be made to a
 3 section or other provision of the Federal Insecticide, Fungi-
 4 cide, and Rodenticide Act (7 U.S.C. 136 et seq.).

5 DEFINITIONS

6 SEC. 3. (a) Section 2(a) (7 U.S.C. 136(a)) is amended—

7 (1) by striking out “and” at the end of paragraph

8 (3);

9 (2) by striking out the period at the end and in-
 10 serting in lieu thereof “; and”; and

11 (3) by adding at the end thereof the following new
 12 paragraph:

13 “(5) in the case of any pesticide, an ingredient
 14 which will endanger human beings.”.

15 (b) Section 2(e) (7 U.S.C. 136(e)) is amended—

16 (1) in paragraph (1)—

17 (A) by striking out “or supervise the use of”
 18 in the first sentence; and

19 (B) by striking out “use” in the second sen-
 20 tence and inserting in lieu thereof “uses”;

21 (2) by striking out “or supervises the use of” each
 22 place it appears in paragraphs (2) and (3); and

23 (3) by striking out paragraph (4).

24 (c) Section 2(n) (7 U.S.C. 1367(n)) is amended by strik-
 25 ing paragraph (1) and inserting in lieu thereof—

1 “(1) the name of any inert ingredient and the
2 name and percentage of each active ingredient, and the
3 total percentage of all inert ingredients, in the pesti-
4 cide; and”.

5 (d) Section 2(bb) (7 U.S.C. 136(bb)) is amended by strik-
6 ing out “man or”.

7 (e) Section 2 (7 U.S.C. 136) is further amended by
8 adding at the end thereof the following new subsections:

9 “(ff) DATA GAP.—The term ‘data gap’ means any
10 study, information, or data required by the guidelines issued
11 pursuant to section 3(c)(2), or other action determined by the
12 Administrator to be necessary to make the determinations
13 required under section 3(g), which (1) has not been submitted
14 to the Agency, or (2) has been submitted to the Agency but
15 which the Administrator determines does not satisfy the re-
16 quirements of an adequate scientific study or is inconsistent
17 with sound scientific principles. In making the determination
18 required under clause (2) of the preceding sentence, the Ad-
19 ministrator shall examine, at a minimum, the protocols, docu-
20 mentation of the conduct and analysis of the study, and the
21 results of the study to determine whether the study fulfills the
22 data requirement for which the study was submitted to the
23 Administration.”.

1 **REGISTRATION OF PESTICIDES**

2 **SEC. 4. (a) Section 3(c) (7 U.S.C. 136a(c)) is**
3 **amended—**

4 (1) in paragraph (2)(A)—

5 (A) by striking out “shall revise” in the first
6 sentence and inserting in lieu thereof “may
7 revise”;

8 (B) by inserting after the first sentence the
9 following new sentence: “The Administrator shall
10 (i) require sufficient information under the guide-
11 lines to enable the Administrator to assess pursu-
12 ant to the standards prescribed in this Act the
13 risks and benefits of pesticides (including relevant
14 data on toxicity, exposure of workers and non-
15 workers, product and residue chemistry, environ-
16 mental fate, product efficacy, and hazards to wild-
17 life), (ii) impose, to the extent practicable, uniform
18 and consistent data requirements under the guide-
19 lines, and (iii) grant an individual waiver from, or
20 variance in data requirements or protocols under,
21 the guidelines only after public notice and com-
22 ment and only if the advisability of the waiver or
23 variance is clearly established.”;

24 (C) by striking out “he” each place it ap-
25 pears in the third sentence (after the amendment.

made by subclause (B)) and inserting in lieu thereof of "the Administrator"; and

(D) by striking out the last sentence and inserting in lieu thereof the following new sentence: "Except as provided in section 10, during and after the comment period referred to in section 3(c)(4), data submitted to the Administrator in support of a petition to establish a tolerance or in support of an application for registration, and any other scientific information which is relevant to registration actions taken by the Administrator, shall be made available to the public in an expeditious manner.";

(2) amending subsection 6(c)(2)(B) to read as follows:

"(B) ADDITIONAL DATA TO SUPPORT EXISTING REGISTRATION.—

"(i) If the Administrator determines, pursuant to section 3(g) or otherwise, that additional data are required to maintain in effect an existing registration of a pesticide product (or a category of products) containing a particular active ingredient, the Administrator shall notify all existing registrants of the pesticide to which the determination re-

1 lates and publish a list of such registrants
2 and of such data requirements in the Federal
3 Register. The notice shall specify the data
4 required, the date by which the data shall be
5 submitted, and the procedure for obtaining
6 rulings by the Administrator on questions
7 concerning the applicability of the notice to
8 various registrants or concerning the nature
9 of the data required to be submitted.

10 “(ii) Each registrant of such a pesticide
11 product to whom the notice is applicable
12 shall provide evidence within 120 days after
13 receipt of the notification specified in clause
14 (i) of this subparagraph that it is taking the
15 appropriate steps prescribed by the Adminis-
16 trator to secure the required data. If more
17 than one registrant is subject to the notice,
18 such steps shall include entering into a joint
19 data development arrangement, unless the
20 registrants subject to the notice unanimously
21 agree otherwise. The joint data developers
22 shall furnish to the Administrator the name,
23 address, and telephone number of the person
24 to whom inquiries concerning the arrange-
25 ment should be addressed. As an initial cost

1 of participation the joint data developers
2 shall divide equally 25 percent of the esti-
3 mated total cost of producing the required
4 data or each shall pay \$100,000, whichever
5 is less. The balance of the cost of producing
6 the data shall be paid by the joint data de-
7 velopers as needed, and shall be shared by
8 each joint data developer on the basis of its
9 United States market participation for the
10 pesticide being tested, based on total pounds
11 of active ingredient equivalent sold or used
12 annually. Each joint data developer's market
13 participation shall be adjusted during the
14 period of the data development so that the
15 most recent sales figures are used to com-
16 pute each member's market share for the
17 purpose of determining its share of the re-
18 maining cost of producing the required data.
19 Each of the joint data developers shall
20 submit adequate evidence of its annual
21 market participation to an independent audi-
22 tor for each of the years during the period of
23 the joint data development. Such independ-
24 ent auditor shall be chosen by the joint data
25 developers. The auditor's decisions and de-

1 terminations shall be final and binding on
2 each of the joint data developers. If further
3 data are required by the Administrator under
4 this paragraph, either before or after the ad-
5 ditional data that were originally requested
6 have been submitted, the same formula and
7 procedure specified in this paragraph shall
8 apply as if the subsequent request were the
9 initial request for data. Any registrant who
10 shares in the cost of producing the data shall
11 be entitled to receive a copy of the data, and
12 to examine and rely upon such data in sup-
13 port of maintenance of such registration.

14 “(iii) Notwithstanding any other provi-
15 sion of this Act, if a registrant who is subject
16 to the notice from the Administrator, within
17 the 120-day period prescribed in clause (ii) of
18 this subparagraph, fails to enter into a joint
19 data development arrangement under that
20 clause, or fails to take appropriate steps to
21 secure and submit the required data, or fails
22 to comply with the terms of a joint data de-
23 velopment arrangement, the Administrator
24 shall issue a notice of intent to suspend such
25 registrant’s registration of the pesticide for

1 which additional data are required. The Ad-
2 ministrator may include in the notice of
3 intent to suspend such provisions as the Ad-
4 ministrator deems appropriate concerning the
5 continued sale and use of existing stocks of
6 such pesticide. Any suspension proposed
7 under this subparagraph shall become final
8 and effective at the end of 30 days from re-
9 ceipt by the registrant of the notice of intent
10 to suspend, unless during that time a request
11 for hearing is made by a person adversely af-
12 fected by the notice, or the registrant has
13 satisfied the Administrator that the registrant
14 has complied fully with the requirements that
15 served as a basis for the notice of intent to
16 suspend. If a hearing is requested, a hearing
17 shall be conducted under section 6(d) of this
18 Act. The only matters for resolution at that
19 hearing shall be whether the Administrator
20 had a valid and reasonable basis for requiring
21 the additional data, whether the registrant
22 has failed to take the action that served as
23 the basis for the notice of intent to suspend
24 the registration of the pesticide product for
25 which additional data is required, and wheth-

1 er the Administrator's determination with re-
2 spect to the disposition of existing stocks is
3 consistent with this Act. If a hearing is held,
4 a determination shall be made within 75
5 days after receipt of a request for such hear-
6 ing, and the decision made after completion
7 of such hearing shall be final. Any registra-
8 tion suspended under this subparagraph shall
9 be reinstated by the Administrator if the Ad-
10 ministrator determines that the registrant has
11 complied fully with the requirements that
12 served as a basis for the suspension of the
13 registration.

14 “(iv) Subject to the provisions of clause
15 (vi) of this subparagraph, data submitted
16 under this subparagraph (before or after the
17 effective date of the Federal Insecticide,
18 Fungicide, and Rodenticide Reform Act)
19 shall not be considered by the Administrator
20 to support any application for registration,
21 amended registration, reregistration or ex-
22 perimental use permit on behalf of any
23 person other than the joint data developers
24 for a period of 15 years after the data are
25 submitted, unless any such person has reim-

1 bursed the joint data developers by paying a
2 share of the real cost of producing the data
3 in proportion to the number of persons shar-
4 ing in such costs. Upon payment, such
5 person shall be considered to be an original
6 participant and shall share in all rights and
7 be bound by all obligations entered into by
8 the original data developers. Such reimburse-
9 ment shall be made to the original partici-
10 pants based on the percentage of the overall
11 monetary participation in the joint data de-
12 velopment arrangement.

13 “(v) The provisions of this clause shall
14 apply to health and safety data submitted
15 voluntarily by a registrant or applicant at
16 any time after September 30, 1978, to re-
17 place data which such person deems scientifi-
18 cally insufficient under generally accepted
19 good laboratory practices or test standards.
20 In order to obtain the rights provided by this
21 clause and clause (iv) of this subparagraph
22 with respect to such data, a registrant or ap-
23 plicant undertaking such a replacement study
24 shall notify the Administrator that the re-
25 placement study is being performed or has

1 been performed. The Administrator shall
2 publish any such notification in the Federal
3 Register promptly after its receipt, and shall
4 state therein whether the validity of the
5 study is under review and any determinations
6 as to its validity which have been made.
7 Each person who, as of the date of publica-
8 tion, is a registrant or an applicant for registra-
9 tion of any product containing the active
10 ingredient which is the subject of the study
11 shall have the opportunity to participate in a
12 joint data development arrangement as pro-
13 vided in clause (ii) of this subparagraph. If a
14 registrant or applicant of record as of the
15 date of publication of the notice informs the
16 person undertaking the study, within 90 days
17 of the date of publication, of the registrant or
18 applicant's decision to voluntarily participate,
19 the registrant or applicant shall have the
20 rights and duties of a joint data developer as
21 described in clauses (ii), (iii), and (iv) of this
22 subparagraph.

23 “(vi) With respect to any study which
24 has been or is being performed in response to
25 a request for additional data issued under

1 this subparagraph between September 30,
2 1978, and the date of enactment of the Fed-
3 eral Insecticide, Fungicide, and Rodenticide
4 Reform Act, any person who on such date of
5 enactment is the registrant of a product of
6 the type to which that request applies but
7 who is not already a party to an agreement
8 to share in the cost of performing that study
9 shall be entitled to enter into a joint data de-
10 velopment arrangement with any person or
11 group which is performing or has performed
12 that study, under which arrangement such
13 person shall have the rights and duties of a
14 joint data developer as follows: In the case
15 where a study is being performed by two or
16 more persons under a joint data development
17 agreement, a registrant who wishes to avail
18 himself of the rights provided by the clause
19 shall be bound by the terms of such agree-
20 ment; and in all other cases, a registrant
21 who wishes to avail himself of the rights pro-
22 vided by this clause shall share in the cost of
23 producing the data as provided in clause (iv)
24 of this subparagraph and shall be subject to
25 the provisions of clause (iii) of this subpara-

1 graph: *Provided*, That any registrant who
 2 wishes to be availed of the rights provided
 3 by this clause shall, not later than 120 days
 4 after date of enactment of the National Pesticide Hazard Prevention Act, submit an ir-
 5 revocable offer to enter into such an arrange-
 6 ment to the person or group which is per-
 7 forming or has performed the study.”.

9 (3) by striking out “30” in the second sentence of
 10 paragraph (4) and inserting in lieu thereof “ninety”;

11 (4) in paragraph (5)—

12 (A) by inserting “with respect to both active
 13 and inert ingredients, and makes written findings”
 14 after “determines” in the first sentence;

15 (B) by striking out “and” at the end of sub-
 16 paragraph (C) of the first sentence;

17 (C) by striking out “generally” in subpara-
 18 graph (D) of the first sentence;

19 (D) by striking out the period at the end of
 20 the first sentence and inserting in lieu thereof “;
 21 and”;

22 (E) by adding after subparagraph (D) in the
 23 first sentence the following new subparagraph:

24 “(E) when used in accordance with wide-
 25 spread and commonly recognized practice it will

1 not endanger human beings (including children
2 who are permitted under the Fair Labor Stand-
3 ards Act (20 U.S.C. 201 et seq.) to work in areas
4 treated with pesticides).”;

5 (F) by inserting after the first sentence the
6 following new sentence flush to the margin:

7 “In determining whether a pesticide will endanger
8 human beings under subparagraph (E) of the preceding
9 sentence, the Administrator shall consider the potential
10 chronic effects of the pesticide on human beings (in-
11 cluding oncogenicity, mutagenicity, fetotoxicity, repro-
12 ductive effects, and behavioral effects).”; and

13 (G) by striking out the second to the last
14 sentence and inserting at the end of the paragraph
15 the following new sentences: “If the Administra-
16 tor determines that the requirements of this para-
17 graph are satisfied, the Administrator shall pub-
18 lish in the Federal Register notice of the determi-
19 nation and a summary of the factual basis and
20 reasons therefor. Upon publication of the notice, a
21 person adversely affected by the notice (including
22 a person opposed to the registration and use of
23 the pesticide) shall have the same remedies as are
24 provided to a person adversely affected by a
25 notice under section 6(b).”;

- 1 (5) by striking out "may" in the first sentence of
- 2 paragraph (6) and inserting in lieu thereof "shall";
- 3 (6) in paragraph (7)—
- 4 (A) by striking out "and" at the end of
- 5 clause (i) of the first sentence of subparagraph
- 6 (A);
- 7 (B) by inserting before the period at the end
- 8 of the first sentence of subparagraph (A) the fol-
- 9 lowing: ", and (iii) a use of the pesticide has not
- 10 been canceled or suspended under section 6, or
- 11 voluntarily withdrawn if the Administrator deter-
- 12 mines that the voluntary withdrawal of the pesti-
- 13 cide was associated with concern over potential
- 14 adverse human health or environmental conse-
- 15 quences of the pesticide"; and
- 16 (C) by adding at the end of subparagraph (C)
- 17 the following new sentence: "Subject to section
- 18 10, the Administrator shall make available to the
- 19 public data submitted in support of a conditional
- 20 registration under this subparagraph (including a
- 21 list of the outstanding tests to be performed on
- 22 the pesticides and the timetables for the perform-
- 23 ance of the tests)."; and
- 24 (7) by striking out paragraph (8).
- 25 (b) Section 3(d) (7 U.S.C. 136a(d)) is amended—

1 (1) in paragraph (1)—

2 (A) by striking out “generally” in subpara-
3 graph (B);

4 (B) by inserting “or contamination of ground
5 water,” after “applicator,” in the matter preced-
6 ing clause (i) of subparagraph (C);

7 (C) by striking out “or under the direct su-
8 pervision of” in subparagraph (C)(i);

9 (D) by inserting “(including contamination of
10 ground water)” after “environment” in the first
11 sentence of subparagraph (C)(ii); and

12 (E) by inserting after the first sentence of
13 subparagraph (C)(ii) the following new sentence:
14 “In establishing such other restrictions, the Ad-
15 ministrator shall specifically consider the seasonal,
16 soil-specific, and hydrogeologic characteristics of
17 the location in which the pesticide will be ap-
18 plied.”; and

19 (2) by inserting “(including contamination of
20 ground water)” after “environment” in the first sen-
21 tence of paragraph (2).

22 (c) Section 3(f) (7 U.S.C. 136a(f)) is amended—

23 (1) by inserting “registration of an active ingredi-
24 ent that has been registered under subsection (c) of this
25 Act, or reregistered under subsection (g) since October

1 21, 1972" after "a pesticide" in the proviso of para-
2 graph (2); and

3 (2) in paragraph (3)—

4 (A) by inserting "and States" before the
5 period at the end of the caption; and

6 (B) by inserting "or with any State" before
7 the period at the end thereof.

8 (d) Subsection (g) of section 3 (7 U.S.C. 135a(g)) is
9 amended to read as follows:

10 “(g) REREGISTRATION OF PESTICIDES.—

11 “(1) The Administrator shall accomplish the re-
12 registration of all pesticides in accordance with this
13 subsection.

14 “(2)(A) Within 120 days after the date of the en-
15 actment of the Federal Insecticide, Fungicide, and Ro-
16 denticide Reform Act, the Administrator shall publish
17 in the Federal Register a list of pesticide-active ingre-
18 dients not reregistered since September 31, 1978, in
19 the order of their priority for reregistration under this
20 Act.

21 “(B) In establishing the list, the Administrator
22 shall—

23 “(i) give the highest priority on the list to
24 pesticides used in substantial volumes that result
25 in a postharvest residue in or on food or feed

1 crops or in postapplication residues in potable
2 ground water; and

3 “(ii) include among the pesticides accorded
4 the highest priority on the list the pesticides
5 shown to cause mutagenic effects in an appropri-
6 ately designed and conducted experiment using a
7 bacterial test system.

8 “(C) The establishment of the list by the Adminis-
9 trator shall not be subject to judicial review.

10 “(3) In accordance with the schedule prescribed in
11 subparagraph 2(A) above, the Administrator shall ex-
12 amine the information in the files of the Environmental
13 Protection Agency which relates to pesticide-active in-
14 gredients included in the list described in paragraph
15 (2), identify any data gaps in the information, and pub-
16 lish in the Federal Register a notice of the data gaps
17 at the same time the list required under subparagraph
18 2(A) above is published. Within 1 year of publishing
19 the list and data gaps, the Administrator shall issue
20 letters pursuant to section 3(c)(2)(B) requiring regis-
21 trants to fulfill as expeditiously as possible any data
22 gaps identified pursuant to subparagraph (A) above.

23 “(4) If the Administrator with respect to a pesti-
24 cide-active ingredient does not take the actions re-
25 quired under paragraphs (3) above, and if there are

1 outstanding data gaps on a pesticide-active ingredient,
2 the Administrator shall issue pursuant to subsection
3 (c)(2)(B)(iv) a notice of intent to suspend the registra-
4 tion of pesticides containing the ingredient.

5 “(5)(A) In accordance with the schedule specified
6 by the Administrator under section 3(c)(2)(B), but in no
7 event later than 3 years after the date of the publica-
8 tion under subparagraph (3) of the notice of data gaps
9 with respect to a pesticide-active ingredient, a registra-
10 rant of the ingredient shall—

11 “(i) conduct such studies as the Administra-
12 tor determines are necessary to fill the data gaps
13 identified in the notice; and

14 “(ii) report the results on the studies to the
15 Administrator, unless additional time, not to
16 exceed 1 year, is required to carry out range-find-
17 ing or other preparatory studies needed to conduct
18 a scientifically acceptable long-time experiment.

19 “(B) If a registrant does not comply with subpara-
20 graph (A) above, the Administrator shall issue pursuant
21 to section (c)(2)(B)(iv) a notice of intent to suspend the
22 registrant’s registrations of the active ingredient.”.

23 (e) Section 3 (7 U.S.C. 136a) is amended by adding at
24 the end thereof the following new subsection:

1 “(h) **INERT INGREDIENTS.**—No later than June 30,
 2 1984, the Administrator shall issue regulations which require
 3 a registrant to conduct tests on the inert ingredients in pesti-
 4 cide product formulations to determine if the ingredients may
 5 cause an unreasonable adverse effect on man or the environ-
 6 ment, either alone, or synergistically with the active ingredi-
 7 ent or other inert ingredients contained in the formulation.
 8 Information on the toxicity of inert ingredients shall be sub-
 9 ject to disclosure under the provisions of section 10 of this
 10 Act: *Provided*, That the Administrator shall not disclose the
 11 percentage of each inert ingredient in a given pesticide for-
 12 mulation unless the Administrator has determined that such
 13 disclosure is necessary in the public interest.”.

14 **SEC. 5.** Section 4(a)(1) (7 U.S.C. 136b(a)(1)) is amend-
 15 ed—

16 (1) by striking out “and shall not require private
 17 applicators to take any examination to establish compe-
 18 tency in the use of pesticides” in the proviso of the
 19 first sentence; and

20 (2) by striking out “: *Provided, however*” in the
 21 seventh sentence and all that follows through the end
 22 of the eighth sentence and inserting in lieu thereof a
 23 period.

EXPERIMENTAL USE PERMITS

1 **SEC. 6. (a)** Section 5(a) (7 U.S.C. 136c(a)) is amended
 2 by inserting after the fifth sentence the following new sen-
 3 tence: "The Administrator may not issue an experimental
 4 use permit for a use of a pesticide if the use has been volun-
 5 tarily withdrawn for health or environmental reasons, can-
 6 celed, or suspended pursuant to this Act and other registered
 7 pesticides or pest-control practices are available to control
 8 the pest damage which the pesticide is designed to control."

9 (b) Section 5(e) (7 U.S.C. 136c(e)) is amended—

10 (1) by striking out "may" and inserting in lieu
 11 thereof "shall";

12 (2) by striking out "or" the second place it ap-
 13 pears; and

14 (3) by inserting before the period at the end there-
 15 of the following: ", or that the use of the pesticide in
 16 accordance with the permit will not yield data or infor-
 17 mation which is useful in satisfying registration re-
 18 quirements imposed by section 3".

ADMINISTRATIVE REVIEW

19 **SEC. 7. (a)** Section 6(a) is amended by adding a new
 20 subsection (3) as follows:

21 "(3) If at any time after the registration of a pes-
 22 ticide or the establishment of a tolerance it appears to
 23 the Administrator that false, misleading, or inaccurate
 24
 25

1 information has been submitted by the registrant to the
2 Agency in support of such registration or tolerance, the
3 Administrator may immediately issue a notice of intent
4 to cancel such registration or revoke tolerances. In the
5 event that a hearing is held pursuant to such notice,
6 the issues shall be limited to a determination of whether
7 false, misleading, or inaccurate information was sub-
8 mitted to the Agency: *Provided*, That the registration
9 or tolerance shall not be canceled or revoked if the
10 registrant establishes that such information is not pres-
11 ently material to the findings required under section
12 3(c)(5). The hearing shall be concluded within 90 days
13 after issuance of the notice and the Administrator's
14 final decision shall be issued within 30 days of comple-
15 tion of the hearing."

16 (b) Section 6(b) (7 U.S.C. 136d(b)) is amended—

17 (1) in the first sentence—

18 (A) by striking out "generally";

19 (B) by inserting "or may reasonably be ex-
20 pected to endanger human beings (including chil-
21 dren who are permitted under the Fair Labor
22 Standards Act (29 U.S.C. 201 et seq.) to work in
23 areas treated with pesticides)" after "environ-
24 ment"; and

1 (C) by striking out "may" and inserting in
2 lieu thereof "shall"; and

3 (2) by inserting before the period at the end of the
4 ninth sentence the following: "(including a registrant, a
5 user of the pesticide, or a member of the public with or
6 without an economic interest in the continuation of the
7 registration of the pesticide)".

8 (c) Section 6(d) (7 U.S.C. 136d(d)) is amended by insert-
9 ing after the first sentence the following new sentence: "If a
10 hearing is held to consider the registration of a previously
11 canceled pesticide use, the scope of the hearing shall be limit-
12 ed to an examination of the data and evidence not available
13 to the Administrator at the termination of the hearing held
14 under section 6(a) or 6(b), or upon issuance of a cancellation
15 decision."

16 (d) Section 6 (7 U.S.C. 136d) is amended by adding at
17 the end thereof the following new subsection:

18 "(g) EFFECT OF CANCELLATION, SUSPENSION, OR
19 WITHDRAWAL.—If the registration of a pesticide has been
20 canceled, suspended, or voluntarily withdrawn, if the Admin-
21 istrator determines that the voluntary withdrawal of the reg-
22 istration was associated with concern over potential adverse
23 human health or environmental consequences of the pesti-
24 cide, the pesticide shall not be eligible for registration or con-
25 ditional registration under section 3, and experimental use

1 permit under section 5, or a special local needs registration
 2 under section 24(c) for the use or uses for which the registra-
 3 tion has been canceled, suspended, or voluntarily withdrawn,
 4 unless the Administrator finds that—

5 “(1) another registered pesticide or other feasible
 6 alternative to the pesticide is not available to control
 7 the pest damage the pesticide is designed to control;

8 “(2) the pest damage has increased substantially,
 9 or is a new pest infestation since the cancellation, sus-
 10 pension, or withdrawal of the pesticide causing, or
 11 threatening to cause, significant damage; and

12 “(3) data is available to the Administrator which
 13 demonstrates that the pesticide will effectively control
 14 the damage or infestation.”.

15 **STANDARDS APPLICABLE TO PESTICIDE APPLICATORS**

16 SEC. 8. Subsection (a) of section 11 (7 U.S.C. 136i(a)) is
 17 amended to read as follows:

18 “(a) **IN GENERAL.**—The Administrator shall issue reg-
 19 ulations which require a commercial applicator to maintain
 20 records, and file annual reports or other records, concerning
 21 pesticide use by the applicator, including the time, location,
 22 quantities, mixtures, application rates and equipment, and
 23 any such other information as the Administrator determines
 24 necessary to carry out this Act.”.

1

INDEMNITIES

2

SEC. 9. Section 15 (7 U.S.C. 136m) is repealed, except
3 for any indemnification actions underway before enactment of
4 the National Pesticide Hazard Reduction Act.

5

CITIZEN SUITS

6

SEC. 10. The Act (7 U.S.C. 136 et seq.) is amended by
7 inserting after section 16 (7 U.S.C. 136n) the following new
8 section:

9

“SEC. 16A. CITIZEN SUITS.

10

“(a) IN GENERAL.—

11

“(1) Except as provided in subsection (b), a
12 person may commence a civil action for damages or
13 equitable relief, or both—

14

“(A) against a person (including (i) the
15 United States, and (ii) any other governmental in-
16 strumentality or agency to the extent permitted
17 by the eleventh amendment to the Constitution of
18 the United States) who is alleged to be in viola-
19 tion of this Act; or

20

“(B) against the Administrator where there
21 is alleged a failure of the Administrator to per-
22 form any act or duty under this Act which is not
23 discretionary with the Administration.

1 “(2) The district courts of the United States shall
2 have jurisdiction, without regard to the amount in con-
3 troversy or the citizenship of the parties—

4 “(A) to enforce this Act;

5 “(B) to order the Administrator to perform
6 an act or duty described in paragraph (1)(B); and

7 “(C) to apply any appropriate civil or crimi-
8 nal penalty provided under this Act.

9 “(b) NOTICE.—

10 “(1)(A) An action may not be commenced under
11 this section against a person, other than the Adminis-
12 trator—

13 “(i) prior to 60 days after the date the plain-
14 tiff has given notice of the alleged violation to the
15 Administrator, the State in which the alleged vio-
16 lation occurs, and the defendant; or

17 “(ii) if the Administrator or a State has com-
18 menced and is diligently prosecuting a civil or
19 criminal action in a Federal or State court to re-
20 quire compliance with this Act.

21 “(B) A person may intervene in an action de-
22 scribed in subparagraph (A)(ii) as a matter of right.

23 “(2) Except as provided in subsection (f) and
24 unless the violation poses an imminent hazard to
25 human beings or the environment, an action may not

1 be commenced under this section against the Adminis-
 2 trator prior to 60 days after the date the plaintiff has
 3 given notice of the alleged violation to the Administra-
 4 tor.

5 “(3) A person shall provide notice under this sub-
 6 section in such manner as the Administrator shall pre-
 7 scribe by regulation.

8 “(c) CERTAIN UNLAWFUL ACTS.—

9 “(1) An action alleging a violation of section
 10 12(a)(1) may be brought under this section only in the
 11 judicial district in which the violation has occurred.

12 “(2) If the Administrator is not a party to an
 13 action described in paragraph (1), the Administration
 14 may intervene in the action as a matter of right.

15 “(d) COSTS OF LITIGATION.—A court may award the
 16 costs of litigation (including reasonable attorney and expert
 17 witness fees) to a prevailing party, other than the United
 18 States, in an action brought under this section.

19 “(e) LEGAL AND EQUITABLE RELIEF NOT RESTRICT-
 20 ED.—Nothing in this section shall restrict a right which a
 21 person may have to any legal or equitable relief for a viola-
 22 tion of this Act by another person.

23 “(f) CIVIL ACTION BY STATE GOVERNORS.—If the Ad-
 24 ministrator has failed to enforce this Act in a State and the
 25 failure causes an adverse effect on the public health or wel-

1 fare of another State, the Governor of the other State may at
 2 any time commence a civil action against the Administration
 3 under this section.”.

4 **IMPORTS AND EXPORTS**

5 **SEC. 11.** The first sentence of section 17(b) (7 U.S.C.
 6 135o(b)) is amended by inserting “whether voluntary, invol-
 7 untary, or pursuant to settlement,” after “be effective”.

8 **EXEMPTION OF FEDERAL OR STATE AGENCIES**

9 **SEC. 12.** Section 18 (7 U.S.C. 136p) is amended to read
 10 as follows:

11 **“SEC. 18. EXEMPTION OF FEDERAL OR STATE AGENCIES.**

12 **“(a) REQUESTS.—**A Federal or State agency may re-
 13 quest the Administrator to exempt the agency from any pro-
 14 vision of this Act in accordance with this section.

15 **“(b) EXEMPTIONS.—**

16 **“(1)** Except as provided in paragraph (2), the Ad-
 17 ministrator may grant a requested exemption if the Ad-
 18 ministrator determines that the exemption is necessary
 19 to prevent or substantially mitigate an imminent and
 20 substantial danger to public health or welfare.

21 **“(2)** The Administrator may not grant an exemp-
 22 tion which would permit the sale or distribution of a
 23 pesticide for a use for which it is not registered under
 24 this Act if—

1 “(A) another pesticide is registered under
2 this Act for that use, unless the applicant for the
3 emergency exemption demonstrates that the regis-
4 tered pesticide is ineffective or cannot be made
5 available for that use;

6 “(B) the Administrator determines that there
7 is another pest control practice which could be
8 used for the same purpose and would produce a
9 less detrimental effect on the public health, wel-
10 fare, or environment. For the purposes of this
11 subsection, the term ‘pest control practice’ in-
12 cludes both a means of controlling a pest without
13 using a pesticide and the use of a pesticide which
14 is registered for another use or uses.

15 “(c) LENGTH AND RENEWAL.—An exemption under
16 this section may not be issued for more than 1 year or re-
17 newed more than twice.

18 “(d) CONSULTATION.—In determining whether to grant
19 an exemption under this section, the Administrator may con-
20 sult with appropriate State or Federal officials, including
21 those with responsibilities in areas such as agriculture, public
22 health, and fish and wildlife protection.

23 “(e) PUBLIC COMMENT.—Unless the Administrator de-
24 termines it is necessary to grant an exemption within 48
25 hours as prescribed in paragraph (g) below, the Administrator

1 shall publish notice of the application for an emergency ex-
 2 emption in the Federal Register within 10 days of receipt of
 3 the application. Information contained in the application for
 4 an emergency exemption that is requested by a member of
 5 the public within 10 days of the notice of the application in
 6 the Federal Register must be provided at least 10 days prior
 7 to the Administrator's decision with respect to the applica-
 8 tion. In making a determination on the application, the Ad-
 9 ministrator shall consider any information provided to the
 10 Administrator by a member of the public. The Administrator
 11 shall publish in the Federal Register in a timely manner his
 12 decision and the reasons therefor.

13 “(f) DISCLOSURE OF INFORMATION CONTAINED IN
 14 EMERGENCY EXEMPTION APPLICATIONS.—All information
 15 submitted to the Administrator in support of an application
 16 for an emergency exemption shall be disclosed by the Admin-
 17 istrator to any member of the public within 30 days of receipt
 18 of a request for such information.

19 “(g) PRIOR APPROVAL OF THE ADMINISTRATOR.—In
 20 no case may this section permit an unregistered use of a pes-
 21 ticide without the prior approval of the Administrator: *Pro-*
 22 *vided*, That the Administrator must act upon an application
 23 for an emergency exemption within 48 hours if he concurs
 24 with the applicant that extraordinary emergency circum-
 25 stances exist where immediate pest control measures are nec-

1 essary to prevent imminent and substantial harm to man, the
2 environment, or the public welfare.”.

3 **RESEARCH AND MONITORING**

4 **SEC. 13.** Section 20 is amended by—

5 (1) amending subsections (b) and (c) to read as fol-
6 lows:

7 “(b) **NATIONAL MONITORING PLAN.**—In consultation
8 with the Scientific Advisory Panel established by section
9 25(d) of this Act, and the Science Advisory Board established
10 under the Environmental Research and Development and
11 Demonstration Authorization Act of 1978, the Administrator
12 shall formulate and periodically revise, in cooperation with
13 other Federal, State, or local agencies, a comprehensive na-
14 tional plan for monitoring pesticides. This plan shall include
15 provisions for the collection, storage, interpretation, and dis-
16 semination of data on quantities of pesticides used, by active
17 ingredient, by crop, and by geographical area; on human ex-
18 posure to pesticides, including direct and indirect exposure to
19 applicators, farmworkers, homeowners, and others associated
20 with or residing near application sites, and indirect exposure
21 via food, drinking water, and other sources; on existing envi-
22 ronmental loadings of pesticide residues including, specific-
23 ly, air, soils, surface water, ground water, sediments, man,
24 plants, and animals; on trends in residues; and on identifying
25 and preventing potential problems. The plan shall be re-

1 viewed at least every 5 years and updated as appropriate. To
 2 the extent feasible, the monitoring plan shall incorporate and
 3 make use of existing data-collection efforts by EPA or other
 4 Federal, State, or local agencies.

5 “(c) MONITORING.—The Administrator shall undertake
 6 such monitoring in air, soil, surface water, ground water,
 7 sediments, man, plants, and animals, as may be necessary for
 8 the implementation of this Act and of the national pesticide
 9 monitoring plan. The Administrator shall establish proce-
 10 dures for the monitoring of man and animals and their envi-
 11 ronment for incidental pesticide exposure, including, but not
 12 limited to, the quantification of incidental human and envi-
 13 ronmental pesticide pollution and the secular trends thereof,
 14 and identification of the sources of contamination and their
 15 relationship to human and environmental effects. Such activi-
 16 ties shall be carried out in cooperation with other Federal,
 17 State, and local agencies. The Administrator shall assure the
 18 quality of all data.”.

19 (2) adding new subsections (d), (e), (f), and (g) to
 20 read as follows:

21 “(d) The Administrator shall make available to the
 22 public the monitoring data in a timely and useful way.

23 “(e) The Administrator is hereby authorized to request
 24 other agencies to expand or extend existing data-collection
 25 activities as necessary for the implementation of this Act and

1 of the national pesticides monitoring plan. The Administrator
2 is further authorized to pay reasonable funds for such data.

3 “(f) The plan required by subsection (b) shall be pro-
4 posed by rule not later than June 1, 1984, and shall go into
5 effect not later than October 1, 1984, upon which date the
6 Administrator shall begin undertaking the monitoring activi-
7 ties required under subsection (c).

8 “(g) Provided that the purposes of the National Monitor-
9 ing Plan for pesticides and the requirements of subsection (f)
10 of this section are carried out, nothing in this section shall
11 prevent the Administrator from making pesticides monitoring
12 a part of a more comprehensive agency monitoring pro-
13 gram.”.

14 SOLICITATION OF COMMENTS

15 SEC. 14. Section 21(b) (7 U.S.C. 136s(b)) is amended by
16 striking out “may, at his discretion,” and inserting in lieu
17 thereof “shall”.

18 DELEGATION AND COOPERATION

19 SEC. 15. Section 22 (7 U.S.C. 136t) is amended by
20 adding at the end thereof the following new subsection:

21 “(c) OCCUPATIONAL SAFETY OR HEALTH STAND-
22 ARDS.—In exercising any authority under this Act, the Ad-
23 ministrator shall not, for purposes of section 4(b)(1) of the
24 Occupational Safety and Health Act of 1970 (29 U.S.C.
25 653(b)(1)), be considered to be exercising statutory authority

1 to prescribe or enforce standards or regulations affecting oc-
 2 cupational safety or health.”.

3 **AUTHORITY OF STATES**

4 **SEC. 16. (a) Section 24(b) (7 U.S.C. 136v(b)) is**
 5 **amended—**

6 (1) by striking out “Such” and inserting in lieu
 7 thereof “(1) Except as provided in paragraph (2), the”;
 8 and

9 (2) by adding at the end thereof the following new
 10 paragraph:

11 “(2) A State may impose or continue in effect re-
 12 quirements for labeling or packaging in order to en-
 13 force a prohibition on the use of a federally registered
 14 pesticide or device in the State. If a State imposes or
 15 continues in effect the requirements, the State shall re-
 16 quire that the prohibited use be stated on the labeling
 17 or packaging and shall notify the Administrator of the
 18 action and the reasons for the action. The Administra-
 19 tor shall keep a record of the requirements and make
 20 the record available to the public.”.

21 (b) Section 24(c) (7 U.S.C. 136v(c)) is amended—

22 (1) by striking out “federally registered pesti-
 23 cides” in the first sentence of paragraph (1) and insert-
 24 ing in lieu thereof “pesticides which are registered
 25 under paragraph (5) or (7)(A) of section 3(c) and”;

1 (2) in paragraph (2)—

2 (A) by striking out “for more than 90 days if
3 disapproved by the Administrator within that
4 period” in the first sentence and inserting in lieu
5 thereof “until 90 days have elapsed after the date
6 on which the Administrator is notified by a State
7 of the intent of the State to issue the registra-
8 tion”;

9 (B) by inserting after the first sentence the
10 following new sentence: “If the Administrator dis-
11 approves the registration during the 90-day
12 period, the registration shall not become effec-
13 tive.”; and

14 (C) by striking out “(A) on the basis of lack
15 of essentiality of a pesticide or (B)” in the last
16 sentence;

17 (3) in paragraph (3)—

18 (A) by striking out “or” in the second sen-
19 tence and inserting in lieu thereof “that”;

20 (B) by inserting after “hazard,” in the
21 second sentence the following: “or that the regis-
22 tration is unnecessary to meet special local needs
23 and therefore the registrant should apply for reg-
24 istration under section 3(c)(5),”;

1 (C) by striking out "may" in the second sen-
 2 tence and inserting in lieu thereof "shall"; and

3 (D) by adding at the end thereof the follow-
 4 ing new sentence: "If more than five States pro-
 5 vide under this subsection for the registration of a
 6 new or additional use of a pesticide to meet the
 7 same special local need, there shall be a rebutta-
 8 ble presumption that a special local need does not
 9 exist for purposes of this subsection.";

10 (4) by striking out "may" in the first sentence of
 11 paragraph (4) and inserting in lieu thereof "shall"; and

12 (5) adding at the end thereof the following new
 13 paragraphs:

14 "(5) A registration issued by a State under this
 15 subsection shall expire after a 5-year period. At the
 16 end of each 5-year period, the State may issue a new
 17 registration in accordance with this subsection.

18 "(6) If a special local need registration has not
 19 been used, or has lapsed, the State authority initially
 20 granting the registration must so inform the Adminis-
 21 trator."

22 **AUTHORITY OF ADMINISTRATOR**

23 **SEC. 17. (a)** Section 25(d) (7 U.S.C. 136w(d)) is amend-
 24 ed by inserting after the eighth sentence the following new
 25 sentences: "In appointing members to the panel, the Admin-

1 istrator shall attempt to appoint members from the fields of
 2 agricultural economics, entomology, plant pathology, animal
 3 pathology, epidemiology, and ecology, and to avoid the ap-
 4 pointment of members from similar disciplines. The Adminis-
 5 trator shall appoint each member of the panel for a 3-year
 6 term and stagger the appointments such that the terms of no
 7 more than three members expire during the same year.”.

8 (b) Section 25 (7 U.S.C. 136w) is amended by adding at
 9 the end thereof the following new subsection:

10 “(f) REGULATIONS CONCERNING PESTICIDE USE.—

11 “(1) As soon as practicable, but in no event later
 12 than 1 year, after the date of the enactment of the
 13 Federal Insecticide, Fungicide, and Rodenticide
 14 Reform Act, the Administrator shall issue regulations
 15 which require the safe use of pesticides and the protec-
 16 tion of individuals present in the vicinity of areas treat-
 17 ed with pesticides.

18 “(2) The regulations shall require—

19 “(A) the protection of individuals present in
 20 the vicinity of areas treated with pesticides taking
 21 into account—

22 “(i) the expected levels and effects of
 23 exposure to pesticides;

1 “(ii) the need to establish buffer zones
2 to protect the individuals from the overspray
3 and drift of pesticide applications;

4 “(iii) the need to provide adequate ad-
5 vance warning to individuals present in the
6 areas; and

7 “(iv) the need for adequate field posting
8 of pesticide applications;

9 “(B) the documentation of pesticide applica-
10 tions by applicators and access to the documents
11 by interested parties;

12 “(C) the safe storage, warehousing, and dis-
13 posal of pesticides and pesticide containers; and

14 “(D) the reporting of harm caused by pesti-
15 cides to man and the environment.”.

16 **STATE PRIMARY ENFORCEMENT RESPONSIBILITY**

17 **SEC. 18. (a)** Section 26(a)(1) (7 U.S.C. 136w-1(a)(1)) is
18 amended by inserting “which are at least as stringent as sec-
19 tions 12 and 25” after “regulations”.

20 (b) Section 26 (7 U.S.C. 136w-1) is amended by adding
21 at the end thereof the following new subsection:

22 “(d) In order to maintain primary enforcement responsi-
23 bility for pesticide use violations, a State which has the re-
24 sponsibility on the date of the enactment of the Federal In-
25 secticide, Fungicide, and Rodenticide Reform Act must meet

1 the requirements of subsection (a)(1) within 2 years after such
2 date.”.

3

FEES

4 SEC. 19. The Act (7 U.S.C. 136 et seq.) is amended by
5 adding at the end thereof the following new section:

6 “SEC. 32. FEES.

7 “No later than 120 days after the date of the enactment
8 of the Federal Insecticide, Fungicide, and Rodenticide
9 Reform Act, the Administrator shall require persons—

10 “(1) in order to register or reregister a pesticide
11 or receive other services under sections 3, 5, 18, and
12 24(c), to pay such fees to the Administrator as the Ad-
13 ministrator determines will be sufficient over a reason-
14 able period of time to establish and maintain a fully
15 self-supportive registration process under this Act; and

16 “(2) in order to receive services under sections 6,
17 7, 8, 9, and 13, to pay such fees to the Administrator
18 as the Administrator determines will be sufficient to
19 defray the costs of the services.”.

20

EMPLOYEE PROTECTION

21 SEC. 20. The Act (7 U.S.C. 136 et seq.) (as amended by
22 section 20 of this Act) is amended by adding at the end there-
23 of the following new section:

1 **"SEC. 33. EMPLOYEE PROTECTION.**

2 **"(a) IN GENERAL.—**An employer may not discharge an
3 employee, or otherwise discriminate against an employee
4 with respect to the compensation, terms, conditions, or privi-
5 leges of employment of the employee, on the ground that the
6 employee has—

7 **"(1) commenced, caused to be commenced, or is**
8 about to commence or cause to be commenced a pro-
9 ceeding under this Act;

10 **"(2) testified or is about to testify in any such**
11 proceeding; or

12 **"(3) assisted, participated, or is about to assist or**
13 participate in any manner in such a proceeding or in
14 any other action undertaken to carry out this Act.

15 **"(b) REMEDY.—**

16 **"(1)(A) Within 30 days after the occurrence of an**
17 alleged violation of this Act, an employee who believes
18 that the employee has been discharged or otherwise
19 discriminated against by a person in violation of sub-
20 section (a) may file a complaint with the Secretary of
21 Labor (hereinafter in this section referred to as the
22 'Secretary') alleging the discharge or discrimination.

23 **"(B) Upon receipt of the complaint, the Secretary**
24 shall notify the person alleged to have committed the
25 violation of the filing of the complaint.

1 “(2)(A)(i) Upon receipt of a complaint filed under
2 paragraph (1), the Secretary shall conduct an investi-
3 gation of the violation alleged in the complaint.

4 “(ii) Within 30 days after the receipt of the com-
5 plaint, the Secretary shall complete the investigation
6 and notify in writing the complainant and the person
7 alleged to have committed the violation of the results
8 of the investigation conducted pursuant to clause (i).

9 “(iii) Within 90 days after the receipt of the com-
10 plaint, unless the proceeding on the complaint is termi-
11 nated by the Secretary on the basis of a settlement en-
12 tered into between the Secretary and the person al-
13 leged to have committed the violation, the Secretary
14 shall issue an order providing the relief prescribed by
15 subparagraph (B) or denying the complaint.

16 “(iv) An order of the Secretary under this subpar-
17 agraph shall be made on the record after notice and
18 opportunity for an agency hearing.

19 “(v) The Secretary may not enter into a settle-
20 ment terminating a proceeding on a complaint without
21 the participation and consent of the complainant.

22 “(B)(i) If the Secretary receives in accordance
23 with paragraph (1) a complaint of a violation of subsec-
24 tion (a) and determines that the violation has occurred,

1 the Secretary shall order the person who committed
2 the violation to—

3 “(I) take affirmative action to abate the vio-
4 lation;

5 “(II) reinstate the complainant to the former
6 position of the complainant, together with the
7 compensation (including back pay), terms, condi-
8 tions, and privileges of the employment of the
9 complainant;

10 “(III) pay the complainant compensatory
11 damages; and

12 “(IV) where appropriate, pay the complain-
13 ant exemplary damages.

14 “(ii) If the Secretary issues an order described in
15 clause (i), the Secretary shall, at the request of the
16 complainant, assess against the person against whom
17 the order is issued a sum equal to the amount of all
18 costs and expenses (including attorney’s fees) reason-
19 ably incurred (as determined by the Secretary) by the
20 complainant for, or in connection with, the bringing of
21 the complaint upon which the order was based and
22 remit the sum to the complainant.

23 “(c) REVIEW.—

24 “(1)(A) Within 60 days after the issuance of an
25 order described in subsection (b), an employee or em-

1 ployer adversely affected or aggrieved by the order
2 may obtain review of the order in the United States
3 Court of Appeals for the circuit in which the violation,
4 with respect to which the order was issued, allegedly
5 occurred.

6 “(B) The review shall be conducted in accordance
7 with chapter 7 of title 5, United States Code.

8 “(2) If an order of the Secretary is eligible for
9 review under paragraph (1), the order shall not be sub-
10 ject to judicial review in a criminal or other civil pro-
11 ceeding.

12 “(d) ENFORCEMENT.—

13 “(1) If a person fails to comply with an order
14 issued under subsection (b)(2), the Secretary shall file a
15 civil action in the United States district court for the
16 district in which the violation was found to occur to en-
17 force the order.

18 “(2) A district court shall have jurisdiction to
19 grant all appropriate relief (including injunctive relief
20 and compensatory and exemplary damages) in an
21 action brought under this subsection.

22 “(3) A civil action brought under this subsection
23 shall be heard and decided expeditiously.

24 “(e) EXCLUSION.—Subsection (a) shall not apply with
25 respect to an employee who, acting without direction from

1 the employer of the employee, deliberately causes a violation
2 of this Act.”.

3 **INDOOR EXPOSURE**

4 **SEC. 21.** Section 25(c) (7 U.S.C. 136w(c)) is
5 amended—

6 (1) in paragraph (5) by striking “and”;

7 (2) in paragraph (6) by striking the period at the
8 end of the paragraph and substituting in lieu thereof
9 “;” and

10 (3) by adding a new paragraph (7) as follows:

11 “(7) to establish and enforce standards for indoor
12 human exposure to pesticides.”.

13 **CONFORMING AMENDMENTS**

14 **SEC. 22.** The table of contents contained in section 1(b)
15 (7 U.S.C. 116 note) is amended—

16 (1) by striking out the item relating to paragraph
17 (4) of section 2(e);

18 (2) by adding at the end of the items relating to
19 section 2 the following:

“(ff) Data gap.”;

20 (3) by striking out the item relating to paragraph
21 (8) of section 3(c);

22 (4) by inserting “and States” before the period at
23 the end of the item relating to section 3(f)(3);

24 (5) by adding at the end of the items relating to
25 section 3 the following:

“(h) Inert ingredients.”;

1 (6) by adding at the end of the items relating to
2 section 6(a) the following:

“(3) Actions in response to false, incomplete, or inaccurate data.”;

3 (7) by adding at the end of the items relating to
4 section 6 the following:

“(g) Effect of cancellation, suspension, or withdrawal.”;

5 (8) by striking out the items relating to section
6 15;

7 (9) by inserting after the items relating to section
8 16 the following:

“Sec. 16A. Citizen suits.

“(a) In general.

“(b) Notice.

“(c) Certain unlawful acts.

“(d) Cost of litigation.

“(e) Legal and equitable relief not restricted.

“(f) Civil action by State Governors.”;

9 (10) by striking out the items relating to section
10 18 and inserting in lieu thereof the following:

“Sec. 18. Exemption of Federal or State agencies.

“(a) Requests.

“(b) Exemptions.

“(c) Length and renewal.

“(d) Consultation.

“(e) Public comment.”;

11 (11) by adding at the end of the items relating to
12 section 22 the following:

“(c) Occupational safety or health standards.”;

13 (12) by adding at the end of the items relating to
14 section 25 the following:

“(f) Regulations concerning pesticide use.”; and

1 (13) by adding at the end thereof the following:

"Sec. 32. Fees.

"Sec. 33. Employee protection.

"(a) In general.

"(b) Remedy.

"(c) Review.

"(d) Enforcement.

"(e) Exclusion."

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE REFORM ACT AND PESTICIDE IMPORT AND EXPORT ACT OF 1983

WEDNESDAY, NOVEMBER 2, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DEPARTMENT OPERATIONS,
RESEARCH, AND FOREIGN AGRICULTURE,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:39 a.m., in room 1302, Longworth House Office Building, Hon. George E. Brown, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Staggers, Penny, Panetta, Volkmer, Olin, Roberts, Gunderson, Evans of Iowa, and Franklin.

Also present: Representative de la Garza, chairman of the full committee, Representative Evans of Illinois, member of the full committee, Representative Heftel, and Senator Proxmire.

Staff present: Robert M. Bor, chief counsel; John E. Hogan, minority counsel; Mark Dungan, minority associate counsel; Peggy L. Pecore, clerk; Charles Benbrook, Nick Ashmore, Jesse Trevino, Gerald R. Jorgensen and Thomas E. Adams, Jr.

Mr. BROWN. The subcommittee will come to order.

We would like to welcome all of those in attendance this morning. We would particularly like to welcome the Administrator of EPA, Mr. Ruckelshaus. We want you to just relax, Mr. Ruckelshaus.

I have an opening statement, and Mr. Roberts, when he appears, will have an opening statement, and I hope our distinguished full committee chairman will have a brief statement. You will be tremendously enlightened by all of these statements. [Laughter.]

I would like to indicate that you are not being boycotted on the minority side. They are in the midst of a caucus, and we trust that they will show up shortly.

At this point, I would like to ask our distinguished full committee chairman if he would like to open the hearings with a word of wisdom for us.

OPENING STATEMENT OF HON. E (KIKI) de la GARZA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

The CHAIRMAN. Thank you very much, Mr. Chairman.

I join with you and the members of the committee to welcome Administrator Ruckelshaus to his first official meeting with our committee and this subcommittee. I do hope that in the ensuing

weeks and months, we may have many more meetings and continuous dialog on so important an issue with which we deal today.

I want to extend publicly to Administrator Ruckelshaus my and our committee's desire to cooperate with him and to work with him in a positive, forceful manner to address the issues which confront you in this area.

I know that what we deal with here today and all of the aspects of FIFRA that are within our jurisdiction are, needless to say, quite controversial. They somehow attract the emotions of individuals and of entire organizations. It will be our responsibility, along with you, to sift through the emotion, misinformation and those things that would obstruct what we do. Hopefully, we will be able to do that in close cooperation with you.

We have a responsibility, and it is awesome. I know that it might not be a good way to begin this hearing, but I don't know of a better way to say we deal with things that could just destroy our little planet.

If we save and care for one individual and protect him, then we shall have contributed to the mandate of this committee. In protecting that one man and the planet, then, we have one very difficult job, Mr. Administrator. But, with good will and hard work, we shall endeavor to find a common ground. As I have grown to say quite often, the art of the possible is what legislation is.

The art of the possible has to prevail. In this subcommittee we shall need eight votes; in committee, we shall need 21; in the House we shall need 218. And to obtain those numbers, we have to deal with reality and the art of the possible.

So we welcome you. We look forward to, a pleasant, cooperative, constructive, and positive association in the future.

Thank you, Mr. Chairman.

OPENING STATEMENT OF HON. GEORGE E. BROWN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. BROWN. Thank you very much, Mr. Chairman.

Proceeding with my own opening statement, this is the second day of hearings before this subcommittee on two major bills amending the Federal Insecticide, Fungicide, and Rodenticide Act, otherwise known as FIFRA.

The two bills before the subcommittee contain a wide range of important and, in many respects, overdue amendments to FIFRA.

In a hearing held October 6, testimony on these bills was presented by industry, environmental, and agricultural organizations.

H.R. 3818 is the FIFRA Reform Act and was introduced by Congressman Harkin on August 4. Congressman Harkin testified on this bill in our October 6 hearing.

The Honorable William Proxmire, the Senate sponsor of the bill, will be testifying this afternoon in support of the bill. We are looking forward to his appearance.

H.R. 3254, the Pesticide Import and Export Act of 1983, was introduced June 8, 1983, by Congressman Cecil Heftel of Hawaii, who will also appear this afternoon.

Other witnesses this afternoon include the Honorable C. W. McMillan, Assistant Secretary for Marketing and Inspection Serv-

ices of the Department of Agriculture, and Mr. Bruce Hawley, representing the American Farm Bureau.

This morning the subcommittee will hear testimony from the Administrator of the Agency, the Honorable William Ruckelshaus. We have a great many issues and subjects to explore with Mr. Ruckelshaus, and we are very grateful that he has agreed to appear.

Our dialog this morning with Mr. Ruckelshaus will be sort of an historical benchmark for congressional review of the EPA's pesticide program. As our questioning progresses, Mr. Ruckelshaus will no doubt be reminded of the subjects which came up during his last appearance before this committee as Administrator of EPA in March 1971 when Mr. Ruckelshaus testified on a number of pesticide bills pending before the Committee on Agriculture. The administration-proposed bill at that time, H.R. 4152, was discussed that day and eventually passed. That bill remains the backbone of our contemporary FIFRA statute.

Some 12 years have now passed since Mr. Ruckelshaus explained in 1971 why basic changes were needed in the FIFRA statute. It is somewhat ironic that we have before us today legislation addressing many of the same issues which H.R. 4152, the Federal Pesticide Control Act of 1972, was designed to resolve.

Mr. Ruckelshaus, when serving as the EPA's first Administrator, played an extremely positive role both in shaping the statute and in establishing the Agency as a viable and effective institution. He returned to Washington in 1983 because of a sincere concern for the environment.

Those of us in Congress who have steadily supported sound environmental policies these past 12 years applaud Mr. Ruckelshaus for agreeing to again take on the difficult task of leading EPA. We will support his efforts to rebuild the integrity of the Agency so that its resources can be focused once again on environmental and public health protection.

During the past 12 years, our environmental laws and regulations have become encumbered with complex and often contradictory procedural amendments. A number of provisions aimed at protecting the economic interests of industry have complicated the task of environmental protection.

The responsibilities of the Agency have grown tremendously in recent years, while the resources available have fallen. The scientific, administrative, and political difficulties facing the EPA in administering the pesticide program have, if anything, grown worse.

I hope Mr. Ruckelshaus has come to appreciate this contemporary reality and that he will share with us today his assessment of the situation and his ideas for improving the program.

I believe the substance of Mr. Ruckelshaus' 1971 appearance before the Committee on Agriculture is sufficiently pertinent to today's deliberations to warrant reprinting in today's hearing record.

Without objection, it will appear. I am attaching it to my opening remarks. I would also like to ask unanimous consent to include in the hearing record a speech on the pesticide program that I gave October 18, 1983, at a regulatory conference sponsored by the Na-

tional Agricultural Chemicals Association, at the conclusion of my opening remarks.

We will explore with our witnesses today both procedural and substantive questions. The major procedural concern of the subcommittee is how to proceed with this and other legislative initiatives. Because of the Agriculture Committee's heavy legislative schedule for the remainder of this session, there is little chance we will be able to complete action on these bills this fall. I hope to make at least some progress in the markups that have been scheduled during the remainder of the session. We will, of course, resume the legislative process next spring and will try assiduously to meet our May 15, 1984, deadline for reporting a reauthorization bill out of the full committee.

I am realistic enough to accept that the key legislative issues before us today will probably still be with us next spring. The critical question is whether solutions to them—administrative, legislative, or otherwise—will be any closer in sight.

The subcommittee looks forward to the guidance we will receive today on this matter. We have spent a great deal of time learning about pesticide problems and the shortcomings of this complex statute. We are aware that many of the more persistent problems can be addressed administratively under existing statutory authority, and we wonder why they have not been already so addressed.

My strongest personal concerns about the pesticide program are more general than most of the issue addressed by the legislation before us today. The subcommittee's extensive series of oversight on FIFRA has convinced me that the pesticide program has not kept pace with the underlying sciences. More than ample evidence has emerged to raise serious doubts about the integrity of the scientific review processes in the pesticide program. We can't legislate good science, and William Ruckelshaus can't will it to happen. We stand open to any constructive suggestions.

I am also deeply concerned about the recurrent tendency for EPA to shortchange future needs. The pesticide program generally has so much difficulty dealing with today's and yesterday's problem pesticides that it has little or no staff time or resources to devote to preventing future problems.

Most major pesticides actions in recent years have come years after the Agency became aware of well-documented hazards. In many cases, the EPA has been beaten to the regulatory punch by the marketplace and ecological forces when trying to decide how to balance the risks and benefits of problem pesticides. I hope Mr. Ruckelshaus will have some constructive suggestions on how EPA can better institutionalize a capability for foresight and for preventive regulation.

[Additional material follows:]

Federal Pesticide Control Act Hearing, Serial No. 92-A

If there are no further questions, we are greatly obliged to you, Mr. Train, and we appreciate your appearance here.

Mr. TRAIN. Thank you, Mr. Chairman.

The CHAIRMAN. Now, the Chair full well recognizes that we are in a difficult position with Mr. Ruckelshaus. We do appreciate your being here. Mr. Ruckelshaus, and we will be happy to have you present your statement, and we will see what we can do about questions. We will be glad to hear from you.

**STATEMENT OF WILLIAM D. RUCKELSHAUS, ADMINISTRATOR,
ENVIRONMENTAL PROTECTION AGENCY**

Mr. RUCKELSHAUS. Mr. Chairman, I appreciate the opportunity of being allowed to appear before this committee. and I would like to reiterate what Mr. Quarles, who is sitting on my right and who is Assistant Administrator of the Environmental Protection Agency, said when he testified here last February in stating to the committee my apologies for not being able to be here due to a prior commitment. I would again reiterate that apology, and I am sorry that I was not able to be here for the first appearance of our agency before this committee which was so important to our agency. and I would like to express my appreciation for this opportunity, to supplement our testimony of February 22, 1971, before your committee in support of H.R. 4152, the Federal Environmental Pesticide Control Act of 1971 proposed by this administration.

I also want to assure you of our willingness to work with you and your committee in making the much needed changes in the present pesticide program which the bill would accomplish.

A number of questions have been raised during the present hearings as to the nature of the bill's provisions; the effect of these provisions on public health, the environment, farming, industry, and the economy; and the workability of various provisions.

As you know, on March 18, I announced that EPA, through notices of cancellation, was instituting the administrative review process with respect to two related pesticides, aldrin and dieldrin, and a third pesticide, mirex. I also announced that we were continuing cancellation proceedings with regard to two other pesticides, DDT and 2,4,5-T.

Our review of these questions was strictured by the present statutory framework. The most logical course of action in such cases would be to restrict use of such pesticides to applicators who are sufficiently knowledgeable and to restrict uses to situations of real need, while continuing with the administrative review. Under present law no immediate restriction could be imposed without a showing that a particular use presents an imminent hazard to the public. In addition, it would be preferable to have definite control of particular uses, rather than the present authority to act solely through labeling.

Federal authority under present law is focused on controlling the entry of hazardous or ineffective products into the marketplace, labeling requirements, and enforcement of residue limits on and in food products. Actual control of use by these methods is far from adequate. The provisions of H.R. 4152, would remedy the situation by allow-

ing EPA to make more focused individual determinations. This more selective control of ultimate use will permit our society to reap the benefits of scientific advances without paying an intolerable environmental price.

These objectives would be achieved through the new system of registration proposed in H.R. 4152. The Administrator would designate a pesticide within one of three categories: (1) "general use;" (2) for "restricted use;" or (3) for "use by permit only."

Pesticides designated for restricted use will generally be products which, because of their immediate and high toxicity to persons, fish and wildlife, and beneficial plants, should be used only by an individual who understands the hazards and the proper use of the products.

Thus, a pesticide designated for restricted use can be used only by or under the direct supervision of an approved pesticide applicator. This does not mean that only such approved pesticide applicators may handle the pesticide or operate the application equipment. It does mean, for example, that an approved pesticide applicator should be on the site of operations and close enough to assure that laborers under his supervision are in fact carrying out his instructions and to be immediately available in case of accident or other emergency requiring corrective action. Such an applicator, who may be a full-time operator or a farmer, must have obtained a State license based upon a demonstration of competence, according to standards prescribed by the Administrator or promulgated by the State and approved by the Administrator. Federal or State employees engaged in the performance of their official duties who meet the standards do not need a license.

Perhaps the best example of these pesticides classified for "use by permit only", will be products that, because of persistence and mobility in the environment, accumulation and magnification in the food chain, and accumulation in human tissue, causes them to have long-term adverse effect upon the environment, and a potential threat to man.

We believe that use of such pesticides should be restricted to situations of real need, thus minimizing inadvertent overuse. Therefore, a pesticide designed for "use by permit only" could be used with the approval of an approved pest management consultant who met certain standards approved by the Administrator.

We view the bill as an outgrowth of past experience with present law. Administration of that law and increasing knowledge of an experience with pesticides indicated a number of changes need to improve the law. We feel that stronger, more expeditious and more flexible regulations—and more knowledge of the effects of pesticides on health and the environment—are required. Under present law full considerations of environmental concerns consistent with the reasonable use of pesticides is difficult. The use of pesticides and devices is not regulated. Procedures for suspension and cancellation of registration are not flexible enough to adequately protect health and the environment and at the same time retain the benefits of a particular pesticide.

Major changes in present law to meet the requirements described are contained in H.R. 4152. To improve regulation, the bill would extend regulation to pesticide use and sales, and to actions entirely

within a State; require the registration of establishments manufacturing or processing pesticides and authorize the Administrator to establish standards for safe pesticide packaging, disposal, and transportation.

To generate more knowledge of pesticides the bill provides that experimental use permits can be issued by the Administrator prior to registration. Research grants and contracts would be authorized. A national pesticides monitoring plan would be initiated.

The regulatory procedures in present law are shortened and strengthened by repealing the provision for referral of registration refusals, suspensions, and cancellations to a scientific advisory committee; authorizing recall of stocks of suspended pesticides and orders to "stop sale, use, or removal"; increasing maximum penalties and making alternate civil penalties available; and authorizing enforcement by district courts. In addition, provisions are included in the bill which require registered establishments to furnish information, permit entry, inspection, and sampling, and keep prescribed records.

Most importantly in our view, the bill gives the Administrator an ability for flexible and refined use of regulatory powers not available under present law, which sometimes may force him to an all-or-nothing decision on the use of pesticides which may present a danger to health or the environment.

Under the present bill pesticides would be assigned a use classification which would determine the extent of control over their use. Such classification and refinement of control would accomplish two important goals: reduction or elimination of adverse health and environmental effects and tightly controlled continued availability of effective pesticides which may pose environmental problems. The control system which I have described entails the licensing of pesticide applicators and pest management consultants.

Without such control, there is a high probability that certain pesticides would have to be removed from use altogether. In addition, we feel that the more refined, knowledgeable application of pesticides brought about by the use of pest management consultants will not only protect health and the environment—and continue in use otherwise threatened pesticides for which use controls are an adequate safeguard—but will also benefit the pesticide user by enabling more efficient and economical use of pesticides. I cannot stress these points too strongly.

The bill authorizes EPA to assist and cooperate with the States in the training and licensing of pesticide applicators and pest management consultants. We would expect to assist the States in setting up pesticides programs or bringing existing programs into accord with EPA standards. We can train qualified persons, recommend workable procedures and organizational arrangements, and in other ways provide the help States need and ask of us. We are strongly committed to devoting our resources to initiating or improving State programs. We regard the system of control provided in the bill to be workable. To a great extent, especially in States of high agricultural productivity, the elements of the system are already in effect. One reason for this is that of 50 States, 48 have pesticides control laws. Of those 48 only 10 do not have laws regarding applicators and only two lack registration authority. In many States where crops are sold to large

food processors the processors usually make consultants available to growers to assure that use of pesticides is efficient and safe.

It has been suggested that county agricultural extension agents might become consultants. This is certainly within the scope of the bill's provisions, since the only requirement is that the agent demonstrate his competence to be a consultant as prescribed in standards promulgated or approved by the Administrator.

Where there are numerous farmers in a county and the requirements for permit-only pesticides are heavy, a number of consultants would be necessary. We anticipate the use of existing experts in experiment stations, extension service, and field men employed by producer cooperatives or processors. There is already a rather large cadre of such trained experts in the areas of intense agricultural production. In other areas of the country, State departments of agriculture may have to provide the consultant service as a service initially. Maryland is currently doing so as are California and other States.

The question of reaction time where a permit-only pesticide is required has been raised. The approved pest management consultant should know local conditions sufficiently to assure that the pesticide which may be used by permit only is in fact needed at a specific time and in a specific quantity. He should be in a position to issue permits promptly to all users he knows to be capable of using them properly. For example, in case of a pest outbreak, he would be expected to alert his clients to the situation, issue them instructions on how to apply it, if and when the critical pest population level is reached.

Necessarily, in the early stages, permits will have to be granted with less personal investigation than will be desirable later. Thus, initially, permits may be given to large numbers of farmers for quantities of pesticides anticipated to be needed based upon acreage and previous experience with predicted numbers of applications. As rapidly as consultants can be trained and licensed, performance would be strengthened to provide more discriminating judgments by the consultants.

Concern has been expressed as to the increased cost to the consumer and the farmer as a result of the increased regulation under the bill. We share this concern but we do not believe that the cost will be unduly burdensome. In any event, we will strive to keep the cost to a minimum. The Mrak Commission report, page 221, estimates that the cost burden of pesticides necessary for the production of food and fiber would range between 1 and 1.3 percent of the retail purchases of food and clothing by the consumer. Therefore, if the cost of pest control were tripled without reducing production, the cost to the consumer would be raised only 3 to 4 percent. I believe that over a period of years, the common use of qualified pest management consultants will so increase the efficiency of control methods that the cost of developing this concept may result in significant economic gain to the farmer. The large agricultural producers have found it profitable to employ such expert consultants for many years. Certainly, there will be added expense initially, but over the years the program will result in a net economic gain to farmers as well as to society as a whole. Agricultural production may well be enhanced by passage of H.R. 4152 because it will assure availability of useful

pesticides for essential purposes consistent with sound environmental practice. At present sound environmental practice forces us to more drastic action.

In closing, I would like to impress upon you these observations:

Many of the questions raised as a result of the proposed bill deal with the extent of control over pesticides as though such controls do not presently exist. They do exist, through FIFRA and State laws. And under FIFRA the possibility is great that we will suspend and cancel registrations because existing controls do not provide a means to ensure proper use of certain pesticides. H.R. 4152 would give us those means.

We are convinced that additional legislation is needed to improve our present law, based on our experience with it. Once again I assure you of our willingness to work cooperatively with you in shaping this needed legislation.

Thank you for the opportunity to appear and present these additional comments on the pending legislation. I will be glad to answer any questions you may have.

The CHAIRMAN. Well, Mr. Ruckelshaus, we appreciate your appearance and appreciate the attitude you have taken. I do want to say that I am glad that you did not come to us and tell us that you knew what all of these poisons do, because I do not think you do. I do not think we know, and I do not think that any of these self-appointed instant experts know either. I do not want to ask you any questions, but Mr. Belcher asked me when he left if I would present these questions in his behalf. I will present them.

Mr. Belcher asks—and I think you have answered some of these questions as you have gone along:

In the use of materials classified as “for use by permit only,” will a farmer be required to also have a license as a pesticide applicator?

Mr. RUCKELSHAUS. No; he will not under most circumstances. It is conceivable, Mr. Chairman, that a single pesticide would be put in both the restricted use and use by permit only categories, if it met the criteria which I have attempted to spell out in my statement. In other words, if a pesticide were highly toxic to the applicator himself, under our regulations he would have to be a licensed applicator. It might also have the characteristic of persistence, and the ability to move up the food chain representing a hazard to fish and wildlife and a potential threat to man; if it had all of these characteristics it might fall into both restricted use and use by permit only, in which case the applicator would have to have a license. But, generally, he would not.

The CHAIRMAN. You intrigue me, and you make me violate my own regulations—and this is not Mr. Belcher’s question.

I noticed as you went along you referred to that persistent pesticide that became part of the food chain. Now, you are speaking about DDT; is that right?

Mr. RUCKELSHAUS. And some others of the chlorinated hydrocarbons.

The CHAIRMAN. But you are speaking of DDT?

Mr. RUCKELSHAUS. Yes.

The CHAIRMAN. In other words, you are telling us that DDT would be classified as one of these where they would have to have a license?

Mr. RUCKELSHAUS. No, it would be used by permit only. That would be our present thinking, Mr. Chairman.

The CHAIRMAN. Well, thank you, sir.

Now, to go on with Mr. Belcher's questions:

What is your view of county agents being pesticide management consultants?

Most of these people are public employees.

Mr. RUCKELSHAUS. Mr. Chairman, as I mentioned in my statement, it seems to me that the county agent in many instances could be a pest management consultant. A member of my staff conferred with the Agriculture Department this morning and broached that subject to them, and they have assured us that they will take up this possibility with the Extension Service at their next meeting.

The CHAIRMAN. Thank you.

Mr. RUCKELSHAUS. I recognize this is a little bit of a change from the kind of services they have provided in the past, but they are, at least, receptive to the point.

The CHAIRMAN. Would you have them charge a fee?

Mr. RUCKELSHAUS. That would depend. We do not have any fee provision in the act except to the extent that fees must be kept within certain limits so as to only pay for the administration of the State act. That would be up to the State to charge a fee. But if he were a Federal employee, I do not see why he would have to charge a fee under even a regulatory procedure.

The CHAIRMAN. These county agents, as you know, are a combination of State and Federal employee. The Federal Government pays part of the cost and the State pays part of the cost, and if you allow the charge of a fee, you are setting up the Government charging a fee, in effect. If you do not allow them to charge a fee you have created what those on the outside would call "unfair competition." So, it does become rather important as to whether they charge a fee or not.

Mr. RUCKELSHAUS. Yes, I would assume it would be, Mr. Chairman. I suppose it is a question as to whether his salary would be paid by the general taxpayer or whether this is a burden that should be partially borne by the general taxpayers and by the farmer himself. But the bill does not address itself to that.

The CHAIRMAN. I think that is one of the most important issues in the bill, is it not, whether this is really for the benefit of the farmer or whether it is for the benefit of the public?

If it is for the benefit of the public, it seems to me that the public ought to pay for it. If it is for the benefit of the farmer, the farmer ought to pay for it.

Mr. RUCKELSHAUS. Well, I think it is for the benefit of both, Mr. Chairman.

The CHAIRMAN. I think you would have a very difficult time convincing any farmer that it is to his benefit, but maybe you could.

Mr. RUCKELSHAUS. I think that I could convince him, Mr. Chairman, if I were able to talk to him long enough, because I know that most farmers are as concerned, if not more concerned, about the environment than the average citizen.

The CHAIRMAN. Now, Mr. Belcher has a saying which he has repeated many times: he says that when you do not have time enough to

sit down on the wagon tongue and talk to every farmer in the district, you haven't time to sit down on the side of the truck and talk to every farmer in the United States. Perhaps, if you had that kind of time you could do what you are suggesting.

Well, I do not want to take any more time, but let me complete Mr. Belcher's questions:

As to the qualification of pest management consultants, would you make a requirement that the applicant must have had experience in field operation of farming and/or ranching?

Mr. RUCKELSHAUS. Yes, that could be a requirement—I think, if there is any single criterion that the pest management consultant should have, it should be just that. He should have experience as a field operator or as a field man who really understands the problems involved in pest control, particularly in the geographic area that he happened to be operating in.

The CHAIRMAN. Well, now, would a person in the employ of a pesticide company, or a fieldman for a food processing company, be eligible as a pest management consultant?

Mr. RUCKELSHAUS. That is certainly one possibility we are looking into, and we might come to the conclusion that they would, Mr. Chairman. There might be a conflict of interest if a pest management consultant were an employee of a chemical firm in that, whether it was true or not, he might be accused of attempting to foster products of his employer at the expense of the farmer. But, on the other hand, there are many such men presently in the field, in agricultural areas, and it is my understanding that the vast majority of these individuals are of great help to the farmer in advising him when to use pesticides and what kinds of pesticides to use. By the same token, an employee of a food processor in many instances operates as a fieldman and recommends to the farmer the application of certain pesticides, because the processor wants to insure that the goods he buys are of a certain quality; and, so, it is very much to the interest of the processor that not only pesticides be applied in a manner so as to insure the desired quality of the food but also that the tolerance levels are within those limits as set, in many instances, by the Environmental Protection Agency.

The CHAIRMAN.. Well, I recognize in this audience several representatives of the great farm organizations. Would you apply that same rule in reverse and say that a representative of a farm organization could not be an adviser?

Mr. RUCKELSHAUS. I think they pretty clearly could be. And I am not saying that, Mr. Chairman, just because you have pointed out that there are so many of them here. I do not see any conflict of interest in that.

The CHAIRMAN. I do not want to take any more time.

Mr. Abernethy?

Mr. ABERNETHY. Mr. Ruckelshaus, we appreciate your presence this morning. We are most appreciative of your statement and particularly the tone in which it was rendered.

On the 18th of this month, you made an announcement during a press conference at the Mayflower Hotel which had to do with DDT and other pesticides.

You know DDT is rather widely used in the area where I come from in the production of cotton.

Do I understand that your announcement means that my farmers now, insofar as your Agency is concerned, are safe in stocking a supply of DDT for the use in the production of their 1971 crop?

Mr. RUCKELSHAUS. My statement, of which I have a copy here and which I would be glad to supply to the committee—

Mr. ABERNETHY. I have a copy of it before me.

Mr. RUCKELSHAUS. Some 23 pages.

Mr. ABERNETHY. No; the statement I have before me is just a three-page statement.

Mr. RUCKELSHAUS. No. Our statement of the reasons underlying the registration decision concerning the products of DDT, 2,4,5-T, aldrin and dieldrin consists of a 23-page analysis that we made leading up to the decision.

Mr. ABERNETHY. That accompanied this three-page statement?

Mr. RUCKELSHAUS. That is right. That is just a handout.

Mr. ABERNETHY. Well, I would like to have a copy of that.

Now, can you answer my question of a moment ago?

Mr. RUCKELSHAUS. Yes. The answer to your question is "Yes."

Mr. ABERNETHY. Do not go any further. I am satisfied. As long as I have the court with me, I do not want to hear anymore. I will not say anything further, except that I want to thank you. You have been very helpful, really helpful. I did not mean to cut you off. You may proceed.

Mr. RUCKELSHAUS. The reason I wanted to go on, Mr. Abernethy, is because I think this decision that I had to make illustrates as much as anything why I believe we need a bill that is, if not in precisely this form, very similar to the form of the bill which we have introduced.

The Court of Appeals here in the District of Columbia in January of this year made a finding against me. I was substituted for the Secretary of Agriculture in the decision involving DDT and 2,4,5-T, in which the Court has said, essentially, two things regarding the present bill we are attempting to administer pesticides under, FIFRA. It says that whenever the Administrator of this Agency decides that a pesticide which is already registered presents a substantial question as to the risk involved in the continued use of that pesticide, he must institute immediately cancellation proceedings, and in the cancellation proceedings we are the lone administrative review which we have seen initiated as regarding these pesticides mentioned. I then, have the responsibility to weigh the risk of the continued use of the pesticides to man as opposed to the benefit to man from its continued use.

Now, there is a second administrative procedure that also the Court ordered me to go through, which is the decision as to whether to suspend, and for that decision I have an entirely different standard.

In order to suspend, I must find that there is an imminent hazard to the public. I might say, Mr. Sisk, somewhat in response to your question as to the scientific advisory committee, there is no responsibility prior to my making the decision of suspension—which is, at the present, the most awesome power that I have as an administrator of this agency in terms of its impact to the farmer and the environment—I have no responsibility or mandate ordering me by statute to get sci-

tific advice. Of course, quite obviously, anybody exercising any responsibility at all would try to get all of the scientific advice he could, which is what I attempted to do before reaching that decision.

But, in response to the court's orders that we give expanded reasons as to why we were or were not going to suspend DDT under that provision concerning interstate shipment of DDT, we initiated a self-imposed 60-day deadline which ended on March 18 when we made this statement, to decide whether or not we would suspend and to decide, in fact, whether or not there was an imminent hazard to the public from the continued use of DDT and 2,4,5-T, based on all of the scientific evidence that I could get, including the three reports that have been made by governmental advisory committees since 1963. I decided that there was not an imminent hazard to the public.

Mr. ABERNETHY. That is what this three-page statement stated?

Mr. RUCKELSHAUS. That is right. And the 23-page statement goes into it in somewhat more detail.

Mr. ABERNETHY. The reason I asked the question is that I called your office the other day and talked to one of your staff members. I could not get the answer to the particular question I put to you. I am glad to get it on the record this morning. I do not think the person I was talking to was hedging. But I am mighty glad that you are here this morning and that I have gotten the answer that you gave me.

One other thing that I had forgotten that I would like to repeat was a request to be made of you:

Were notes taken of the press conference? Were the questions and answers taken down during the press conference?

Mr. RUCKELSHAUS. There were a lot of questions, and I am sure there were notes taken of those answers.

Mr. ABERNETHY. Have you had those transcribed?

Mr. RUCKELSHAUS. No; no, we did not do that, sir.

Mr. ABERNETHY. All right.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Goodling?

Mr. GOODLING. Thank you, Mr. Chairman.

Let me first say, Mr. Ruckelshaus, I do not envy your job, and I am not going to try to change places with you.

One of our witnesses made a statement and attributed it to you. I wrote and asked if you had made this statement, and I realize that your days are similar to mine, there are simply not enough hours in every day. And this is the statement that he said you made:

"EPA is an independent agency. It has no obligation to promote agriculture or commerce, only the critical obligation to protect and enhance the environment."

Mr. RUCKELSHAUS. I did make that statement.

Mr. GOODLING. You have absolutely no obligation to help promote agriculture?

Mr. RUCKELSHAUS. No statutory obligation. What I was doing was defining the statutory obligation I inherited with the creation of this Agency.

Mr. GOODLING. Who is going to look after agriculture in the use of pesticides?

Mr. RUCKELSHAUS. Mr. Goodling, I think you have been doing a pretty good job here this morning, yourself.

The statement to which you refer, Mr. Goodling, was a statement in a speech that I made about 6 weeks ago, and the context in which I made this statement was an explanation of what I think was a very important trust to this Agency, which is, as I believe has come out here this morning and has probably come out in previous hearings, that there is a good deal of public misunderstanding about many of the problems that exist in the environment, and I think some of this misunderstanding has arisen because the agencies within the Government who were charged with the responsibility of protecting the environment also had other charges. They seemed to be at one time both the regulator and promoter, and this gave rise to many, many feelings that they were paying more attention to promotional responsibility than regulatory responsibility. I do not think that, necessarily, was true, but I think that is what a lot of people felt, and I believe it is important for people concerned with the environment, not only with the question of pesticides but radiation, air, and water pollution, all of our responsibilities, to feel confident that there is one agency in the U.S. Government whose primary responsibility is to see that the environment is protected, and that responsibility is our No. 1 priority. It does not mean that we simply ignore every other problem that exists in society and that we do not pay any attention to the impact of what we are doing on the other facets of society. But our primary mission is protection of the environment.

Mr. GOODLING. I want to assure you every member of this committee is just as interested in protecting our environment as you are. We also have an obligation—and I believe you are willing to admit this—to do something for our farmers also.

Mr. RUCKELSHAUS. I think that the Agricultural Committee of the House certainly has that responsibility.

The CHAIRMAN. Would the gentleman yield?

Mr. GOODLING. Yes.

The CHAIRMAN. I will get into this as just a curbstone lawyer. I guess I find no fault with what the gentleman is suggesting about his possible long-term duties, but if we pass this bill he then has a mandate in respect to the environmental activities very clearly. But at present, if I understand the law, you haven't a power in the world except such as was given to the Department of Agriculture in this respect by these agricultural acts. All you have is the power that was transferred by the President under a reorganization provision, and that Reorganization Act does not give the President the power to promulgate new regulations simply by edict. It simply gives him the power to transfer activities from one agency to another and they still retain all of the limitations and all of the restrictions that were on those powers when originally passed by the Congress.

I grant that if you are talking about a bill that comes along after the reorganization it could be different, but at the present time your powers all grow out of the Reorganization Act.

Mr. RUCKELSHAUS. That is right.

The CHAIRMAN. And the President has no power to say that there shall be no longer any responsibility for agricultural activity simply because he has transferred that power. He could have transferred that to the War Department, or rather the Department of Defense as it is now; he could have transferred it to the Treasury Department or

the Justice Department, or anywhere else, but he still could not have taken away the responsibility that rested on the Secretary of Agriculture to care for the interests of agriculture. That responsibility was there under the existing law, and he cannot transfer powers to you without responsibility. You have to accept responsibility along with the powers.

Mr. RUCKELSHAUS. Mr. Chairman, I do not mean to imply the President has tried to do anything, without Congress having passed the law, that he is not authorized to do, either under the Constitution or under the law. My statement—and my response to Mr. Goodling's question about that statement—gave the thrust of this Agency. It, obviously, has the responsibility of promoting agriculture, as that responsibility rests in the administrative branch. Obviously also, the responsibilities that I have are only those responsibilities which were transferred to me under the reorganization plan which was, in effect, ratified by Congress by the fact that they did not veto.

The CHAIRMAN. But he could not, under the Reorganization Act, transfer those responsibilities to you and just leave the residual responsibility with the Secretary of Agriculture.

Mr. RUCKELSHAUS. If we have a disagreement. I think it is a semantical one. What I am saying is that the purpose of this Agency is, as the Agency's name implies, to protect the environment. That does not mean, by protecting the environment—as I mentioned to Mr. Goodling—that we ignore all other considerations as to what should be done. The protection of the environment is incredibly complex as a subject and it involves all kinds of considerations that are usually not taken into account when somebody talks about protecting the environment.

The question of DDT is a very good example. To immediately suspend the use of DDT may cause more environmental problems than it solves immediately. For that reason, as I tried to spell out in the 23-page report we put out on DDT and other similar pesticides, immediate suspension did not seem to be warranted at the time, based on the standard I had to judge. I do not believe that I have attempted to usurp, by my statement as quoted by Mr. Goodling, the authority of Congress or attribute to the President power he does not otherwise possess.

The CHAIRMAN. Mr. Mayne, Mr. Goodling, and I may be overly concerned about the matter and overly technical, but it seems clear to me that the Reorganization Act never authorized the President simply to pick out of a department certain activities and relieve the recipient of those new powers all responsibilities.

Mr. RUCKELSHAUS. I cannot argue with you on that. The responsibility in FIFRA was transferred to this Agency.

Mr. GOODLING. Mr. Ruckelshaus, you are going to have a decision to make—under this bill you are going to have the power to cancel pesticides that are already cleared for use, and this question has arisen in my mind on a good many occasions: Who would be responsible for disposing of the pesticides that you condemn, the manufacturer, the man who has them in his warehouse to sell to me as a fruitgrower, or me as a fruitgrower having them in my packinghouse?

Mr. RUCKELSHAUS. That is one of the problems which presently exists to which this bill addresses itself. If I cancel the use of a pesti-

cide now under FIFRA—or cancel a product in which the pesticide is a part of the formulation—there is no regulatory responsibility for disposal placed on anybody, nor is there any information, as a rule, given to the average farmer as to what he ought to do with that pesticide after it is canceled.

Now, in the bill it is provided that the Administrator will administer regulations for the disposal of pesticides whether they are canceled or suspended or just in reserve. There are all kinds of problems created.

Mr. GOODLING. What, specifically, will you do with the pesticides that have been condemned and who would be responsible for disposing of them?

Mr. RUCKELSHAUS. This is a subject to which we would have to address ourselves in regulations that would be promulgated by the Administrator under the provisions of the proposed bill. At this stage I think it very much depends on the kind of pesticide we are talking about. If it is a highly toxic pesticide, you have to be very careful with it. If it is a pesticide which when it is incinerated, causes air pollution problems, or pesticides, which cannot be disposed of anywhere near streams or waterways because of the effects on fishlife, we will have to issue regulations and very carefully delineate just how such pesticides should be disposed of, whether they are canceled or suspended or whatever happens to them. There is no such regulatory responsibility or power now anywhere in the Government.

Mr. GOODLING. In the event that you do cancel registrations that have been cleared, who would be responsible for the loss, the financial loss?

Mr. RUCKELSHAUS. Well, the bill does not provide for any change in the present law. The present law says that I can cancel or suspend registration or suspend the interstate shipment of any pesticide and the loss is borne by whoever happens to have possession of the pesticide which can no longer be used.

Mr. GOODLING. That is all.

The CHAIRMAN. Thank you, Mr. Goodling.

Yes, Mr. Mizell.

Mr. MIZELL. Thank you, Mr. Chairman.

Mr. Ruckelshaus, I want to commend you on your statement. You have relieved some of my concerns, but not all of them. Did I understand the answer correctly, to one of Mr. Belcher's questions that the chairman posed, that with a pesticide that is labeled to be used by permit only the applicator would not necessarily have to be licensed to use it?

Mr. RUCKELSHAUS. That is correct. If I might expand a minute on that, Mr. Mizell: The reason is that many of the pesticides that would fall into the category of use by permit only are not particularly hazardous to the applicator. These are the kinds of persistent pesticides which build up and eventually create potential hazards to man and threats to the environment, but the applicator himself has no particular danger from his application of such pesticides. There would be no reason to register those pesticides requiring him to be licensed as an applicator.

Mr. MIZELL. On page 3, it states that the applicator would have to obtain a State license in order to administer those pesticides listed

for restrictive use only. Do you anticipate setting up guidelines for the requirements?

Mr. RUCKELSHAUS. Under section 4 of the bill, we have provided for rather extensive assistance to the States in setting up programs and training licensed pest management consultants and applicators. We would issue regulations and guidelines on all of the facets of each individual program for the aid and assistance of the States.

Mr. MIZELL. But the main responsibility for providing not only the requirements for the licensing but also the use of the pesticides would still remain primarily with the State?

Mr. RUCKELSHAUS. Well, the broad requirements for the use of the pesticide would be in regulations or guidelines of the Administrator of the Environmental Protection Agency, and within those guidelines and within those regulations the States could then have a certain flexibility in tailoring their own program to the problems of that State. I think we ought to set certain base levels of use for the pesticides that fall in these restrictive categories, and the States can set stricter limits if they so desire, or suspend the use, or ban the use completely if they so desire.

Mr. MIZELL. Well, so that you may understand my concern: In North Carolina, we have more small farms, or, I should say, more individually owned farms than any other State in the Union, with the exception of Texas. I understand now, Mr. Chairman, in most cases, the owners of the farms in North Carolina are operating those farms. When it comes time to draft requirements for the licenses, I think it should be remembered that the job being done already by the farmers in North Carolina and the Nation is an outstanding job, and I point to testimony before the committee, by Mr. Kolbye of the Food and Drug Administration where, in his statement if I might quote from it, he says:

All of the data that they have at this time indicates that the incidence of residues of chlorinated organic pesticide chemicals in the food supplies are not increasing and there is a lower incident of residue that is being found for many chemicals in the different categories.

And, under questioning, he said that the evidence they have indicates that the farmer is doing an outstanding job in using pesticides at this time, even without being licensed. I am not necessarily implying that he should not be required to have a license under certain instances, but the point I am making is that, as the farmer is made aware of the uses of pesticides and the dangers that they may pose, he, himself, is imposing restrictions on his use of them. First of all he is more interested in not having anyone poisoned by the crops that he produces, because in most cases, his family is eating what he does not carry to the market.

Another point I would like to make in behalf of the farmer in North Carolina: As you are well aware, we grow a great deal of tobacco in North Carolina, and in 1968, tobacco tested by the North Carolina State University showed a residue content of 50 parts per million. I think that is the right expression for it. In 1970, we are shooting for a level of 4.2 parts per million. This, again, is a testimonial to the job that our farmers are doing with the use of pesticides. In North Carolina, I hope, that when the requirements are drawn up, the issued

licenses, or the requirements for them, these things will be taken into consideration.

There is one other thing that I want to say, and that is to compliment you on the effort that you have already made in trying to set up an agency that can best handle the issuance of permits, and so forth, that is going to be as close to the local region as is possible, whether it be a county agency—or, if this is not possible, some other official that will be easily accessible and a man that will be familiar not only with the people in the area but also with the crops they are producing and their needs. I think this is vital to making what we are doing here being acceptable to the farmers.

I thank you.

Mr. RUCKELSHAUS. Thank you, Mr. Mizell.

The CHAIRMAN. Yes, Mr. Purcell.

Mr. PURCELL. Mr. Ruckelshaus, I want to thank you, as the others have done, for a concise and very meaningful statement. I think, and maybe I am getting into an area that Mr. Abernethy did not want to get into, but now, on the next to the bottom paragraph, the last sentence of the first page of your statement, you say:

I also announced that we were continuing cancellation proceedings with regard to other pesticides, DDT and 2, 4, 5, T.

Now, very quickly, what does this mean?

Now, I understand that you did not stop the distribution of it, as now; but what does this continuing cancellation proceedings really mean?

Mr. RUCKELSHAUS. Under the present act, FIFRA, when a cancellation proceeding is initiated, then, pursuant to the standards set by the court, whenever the Administrator of the Environmental Protection Agency finds that with the continued use of a particular pesticide a substantial question as to safety to the public is raised, we have to initiate cancellation procedures. That means we issue notices of cancellation which go to all of the registrants of that particular pesticide or of a product containing that particular pesticide. The registrants then have 30 days in which to appeal the notices of cancellation. If they do not do anything in 30 days, the cancellation notices become final. If they appeal it, they can do two things under the present act. They can request that a scientific advisory committee be appointed to gather and digest all of the scientific evidence regarding that particular pesticide and make a report to the Administrator, and they can request a public hearing, in which all of the evidence can be presented, in an orderly fashion with due process, to the Administrator regarding the safety of that particular product and its benefits to society. Once the cancellation proceeding is initiated, you can continue to use the product against which the notice was issued while the administrative proceedings are going on.

The Administrator, under the present statute, must weigh the risk of the continued use of the product against its benefits to society, and if I find the risk outweighs the benefits, I have no choice but to cancel that particular use of that particular product.

Mr. PURCELL. Well, then, what stage are you in, in this announcement, in making this final determination in regard to DDT and 2, 4, 5-T?

Mr. RUCKELSHAUS. The cancellation proceedings for 2,4,5-T were started in the spring of last year. We have appointed a scientific advisory committee which has had one 60-day review period and has asked for an extension, and it is now in their second 60-day review period. The committee is permitted two in the act. We will have a report from the scientific advisory committee probably within the next 30 days, I would say, and since I think there has also been a request for a public hearing, after that, we will have a public hearing as to 2, 4, 5-T registration.

As to DDT, we were ordered by the court in January to initiate cancellation proceedings, and we did. Forty-nine registrants appealed the decision after the cancellation notice was issued for DDT. One appellant asked for an advisory committee, and others have asked for a public hearing, so we are in the process of setting up a scientific advisory committee, and are also going through a public hearing.

Mr. PURCELL. Then, are you obligated under the existing law to confirm the decisions made by the scientific review committee or the decisions made by—What?—a hearing examiner in a public hearing?

Mr. RUCKELSHAUS. Both. The scientific advisory committee does not make any decision: it simply gathers the evidence, summarizes it, and presents that evidence to the Administrator, although in the statute there is some confusion and ambiguity as to just what the responsibilities of the scientific advisory committees are.

Mr. PURCELL. How significant to you is this scientific advisory committee's findings or summations?

Mr. RUCKELSHAUS. I have never had a finding of the scientific advisory committee submitted to me since December 2 when the Agency came into existence. I recognize the concern raised by Mr. Sisk in his questioning of Chairman Train. The reason for our recommending that the scientific advisory committee under the present statute be abolished is not because we do not want to get scientific advice, as I do not see how I could possibly back a decision without my getting all of the scientific advice I could get, but because the administrative procedure under the present act is extremely cumbersome. We appoint the scientific advisory committee and they make a report, then we have a public hearing and the public hearing examiner makes a report and recommendation to me, and this whole process takes about a year and a half or longer. It seems to me, when we are talking about substances which could conceivably amount to a substantial risk to the public, then we ought to have a more swift and meaningful administrative process in order to eliminate that risk if, at the end of the administrative process, it proves to be necessary. Of course, any Administrator of this Agency who did not get scientific advice would be acting irresponsibly in my opinion. I think it is significant that the greatest power that I have as an Administrator in the area of pesticides is to suspend interstate shipment. Under the statute, as it presently reads, I do not need to have anybody's advice to do that; I can decide completely on my own that it ought to be suspended. Obviously I am not going to do that, but there is this safeguard for the more severe power I have under the act which requires that after I have suspended it, I am supposed to convene the scientific advisory committee, if requested.

Mr. PURCELL. Well, my only point is now: And I guess I am asking you to prejudge, but is this just another year or 18-months', or something, lease on life that DDT and 2, 4, 5-T has?

Mr. RUCKELSHAUS. Well, you are asking me to prejudge, because the decision I have to make—

Mr. PURCELL. You will make your final decision at the end of the scientific advisory committee's report and the public hearing?

Mr. RUCKELSHAUS. That is right. I cannot at this stage give any assurance as to what my decision will be, one way or the other; otherwise, I would be prejudging. I can say, with regard to this bill, the decision I make ultimately in the cancellation proceeding would be considerably easier if I were to have this kind of control, because all we can do now under the FIFRA is put a label designating a certain use on a pesticide. Once the pesticide is purchased, the purchaser can use that pesticide any way he wants to, regardless of what the label says: but, if I do have this control, through the use-by-permit-only provision for the careful introduction of pesticides into the environment, it seems to me we would be in a much better position to maintain the beneficial uses of these pesticides, and at the same time decrease or eliminate any hazard to the environment. As it now stands, I can either cancel them or continue to have them in restrictive use by the label, but such action does not prohibit anybody from using them any way that they want to.

Mr. PURCELL. All right, sir.

In your statement on page 9, and that is where you refer to increased costs of food, if the regulations are put into effect—and I believe you said the cost might be as much as 3 to 4 percent. I have forgotten.

Mr. RUCKELSHAUS. Yes.

Mr. PURCELL. And that there might be economic benefit along with it, which I agree with, but, now, there is testimony here before us, uncontroverted, that if chemical use were cut out that the cost of food would be increased by 300 percent?

Mr. RUCKELSHAUS. That is all chemical uses?

Mr. PURCELL. Yes, sir; and that when someone advises to put acres into production to offset the necessity caused by the nonuse of chemicals, I would hope that you would have facilities for really taking into consideration the economic impact to the consumer. Now, we sit up here and tend to use the term "farmer," but we really, I think, should be using the term "consumer," because the farmer must, if he can, pass on the cost of his processing or growing on to the consumer, and when you go to putting even 5 million acres into production that are not now in production, this is a rather astronomical undertaking. And, we have progressed to the place where we are, truly, being fed more cheaply in relation to consumable money than we have ever been in history, and this seems to be hard for many people to accept or understand, but this is just the uncontroverted evidence. If you add 3 or 4 percent, this is a very significant addition. Maybe it is necessary. I do not know. But I am pleading with you to take into consideration the economic impact, unless the evidence is really significant on the effects to the environment.

I would just wind up this argument with: What evidence is the best? And some of us have had rather long experiences as judges and administrators of various things, and we are not adverse to trying to take care of the environment, but we are in such a heated arena—and you are, too—that surely working together we can obtain logical results. But you are promulgating these regulations now, and this is going to be where the real head-mashing comes in as to following our law, and, as far as accommodating the middle of the road, really weighing the adversities against the advantages. We want to work with you; we do not want to be up here in an adversary attitude. This is probably the most significant action for the consumer of foods that will be done by the Government maybe in 20 to 50 years. What we decide and the way you administer this bill will be most significant. And I do not know what question I asked you, but I was impressed with my speech.

I wish you would answer "Yes" or "No."

Mr. RUCKELSHAUS. My response to that would be as I read my responsibility under the act, it is to protect the human health in this country and to protect the environment, and I have found in the some 115 days that I have been in this Agency that just about any decision I am making or going to make is bound to make 50 percent of the people mad.

Mr. PURCELL. You are doing pretty well if you do that. It is all right.

Mr. RUCKELSHAUS. In that sense, it makes it easier to do what is right, if you are going to make 50 percent of the people mad whatever you do. I can assure you, to the extent it is possible in making these decisions, that I am going to try to make them based on the charge I have been given, and I do not see that my charge is to respond irresponsibly every time somebody says that a particular pesticide should be taken off the market, or a particular action should be taken in any area, without getting all of the facts and all of the evidence. It could be that we would disagree on a particular action that I took, but I will attempt to take actions based on all of the evidence that I can gain and all of the advice that I can get from people who have the capacity to give good advice.

Mr. PURCELL. Now, are you saying "capacity to give good advice," meaning a background of learning that qualifies them?

Mr. RUCKELSHAUS. And experience.

Mr. PURCELL. We have gotten some pretty capable people of giving advice up here, and their background was either meager or totally lacking, and yet they were not short on advice.

Mr. RUCKELSHAUS. I have got plenty of advice, too.

Mr. PURCELL. Well, now, you will have charge of labeling, but you do not have any way that you have ever figured out to have anything to do with advertising?

Do you have something to do with the advertising of a product that was, in your judgment, a misrepresentation of the product under the law or the proposed law?

Mr. RUCKELSHAUS. Dr. Johnson, who is Commissioner of our Pesticide Office, says that advertising is considered to be a part of the label.

The FTC does have the responsibilities there, obviously, but we have the responsibility prior to registering any pesticide to insure that

it does what it is supposed to do. The testing of the efficacy remains with the Agriculture Department.

Mr. PURCELL. Well, on the far end, on the other end of the spectrum, we have advertising—and I have one in my hand that is really put out by the National Audubon Society which, honestly, as far as I can understand, is a misrepresentation from the beginning to the end.

I am not trying to get you involved in it, but I think you and I both believe in the truth being told by whomever is telling the story, and I just wondered if you are ever made aware of such things as this, and I know you cannot read from there, but it is a full-page advertisement in the Saturday Review dated November 7, 1970. It is advertising for membership in the Audubon Society, but it says:

Anyone who read the recent press reports on DDT and cancer is probably asking, "Is anyone doing anything about it?"

Well, in very vehement language, it says that they are the only ones doing anything about it. This is just absolutely unfounded, untrue, and, well, we have freedom of the press, and this would just scare people to death, and I wonder if these kinds of things are ever brought to your attention?

Mr. RUCKELSHAUS. Well, I do not know the particular advertisement you are referring to there, but I receive from time to time, in the mail and otherwise, suggestions as to what I might do with myself. It seems to me not altogether based on rational judgment, but we do not have any direct control over claims that are made against particular products. I believe that one of the things that is necessary is responsibility for advertising claims control lodged somewhere in the Federal Government, so that when an agency says, "This is what we have found, based on all the evidence we can get, of a particular product, and here is the way we are controlling it," and if the agency has the information necessary to reassure the public, then—I do not know about that one you read—we will get some of the claims that I have read down to more rational limits.

Mr. PURCELL. We are really living, or truly going through, maybe, the most dangerous period in regard to the further feeding of this country, and I may sound silly to some, but the good judgment that this committee uses, and the Congress, and you use, is the most significant single act maybe that we will be participating in in the near future, and I just wanted to urge us all to be serious, responsible, and farsighted on balance.

And, again, I do not know what you are supposed to say to that, but thank you very much.

The CHAIRMAN. Yes, Mr. Sisk.

Mr. SISK. Mr. Chairman, let me commend you, Mr. Ruckelshaus, as others have, on your statement. I do not wish to compare it unfavorably with the statement made by the earlier witness but I appreciate the fact that you did not make any arbitrary statements on some theory that someone had determined to be fact. I think you well expressed the situation.

There are some questions I have, which I posed to Mr. Train earlier. You have already commented to some extent. I would like to discuss a little bit further the matter of your recommendations to eliminate the Scientific Advisory Council.

I do this in light of what you have already discussed to some extent with the committee and other witnesses, as to how decisions are to be made. You have in your hands almost the power of life and death over substantial areas of agriculture in this country. I refer specifically to my own State and particularly my own district which includes Fresno County. I read the other day that we are supposedly the largest users of insecticides or pesticides in the United States.

Whether that is true, I do not know, but it is a factor that you are not always going to be the Administrator.

I appreciate your comments here this morning and I appreciate your sincerity as to the way you are going to make the decisions and the kind of advice that you are going to take. But looking into the future, I would say we have a great suspicion and concern about the elimination of the Scientific Advisory Council. I hope the administration will take a further look at that.

And I recognize the problem of delay in decisionmaking. Is that your problem?

Mr. RUCKELSHAUS. That is part of it; it is not the whole problem.

Mr. SISK. How do you get scientific advice, Mr. Ruckelshaus, in any speedy way and still call it scientific. I know you want scientific information.

Mr. RUCKELSHAUS. All right, Mr. Sisk, I guess the crux of what you are saying is that unless you build into the administrative process some mechanism whereby you can be sure that the Administrator of this agency is going to get some scientific advice, you are fearful that some Administrator might act without getting any scientific advice and act irresponsibly?

Mr. SISK. We would hope it would never happen, but I think there is no question that it is a fear in the minds of many.

Mr. RUCKELSHAUS. I understand. In the first place, if an Administrator wanted to act irresponsibly, I am not sure you could stop him in any kind of a scientific advisory committee because the committee, itself, does not make the decision. The Administrator makes the decision.

Mr. SISK. I understand.

Mr. RUCKELSHAUS. It might make it harder because he might have to fly in the teeth of a report, but anybody who was running an agency like this, where the determinations that had to be made were so delicate and based on such scientific evidence that it has to be assessed by people skilled in making that assessment, it just cannot function unless they have within the agency that scientific advice, or he can go outside an agency to get scientific advice, the best scientific advice that he can get representing every conceivable point of view. Unless he operated that way, the agency would not last very long, because without scientific credibility for decisions that are made by the agency, it simply would not function. My concern about the scientific advisory committee is that it does not insure that the Administrator will act responsibly, and I do not believe you can do that by law.

I do not think you can put into a law an assurance that administrative decisions that are made will not be arbitrary. You can take it to the court and reverse it if it is arbitrary or capricious, but somewhere in any administrative system you have to lodge the power to make a

decision. In this Agency we have a determination to make in a cancellation proceeding as to whether the risk outweighs the benefit, and the longer I have to wait in order to make that determination, it seems to me, the less responsible that is in terms of its impact on the society.

So, if we cannot get a rather swift administrative review in making this very difficult decision, then the law is inadequate to discharge its responsibility to see that society is protected in the event that a real risk is shown. Of course, I cannot make that ultimate decision with any kind of credibility at all unless I take into account all kinds of scientific evidence and testimony.

Now, in the 60-day period in which the court ordered us to review whether we should suspend DDT, I talked to the Mrak Commission, the committee which is an advisory committee now to the Environmental Protection Agency, and which has been mentioned several times before this committee. I also met in our conference room with a group of about 12 scientists regarding DDT and what its impact is on man and on the environment, and I might say I got the widest spectrum of opinion from this group conceivable.

But I believe I talked to as many qualified scientists as I could legitimately be expected to talk to in the time given. I had no responsibility to do that under the law. I could have talked to no one and could have made a decision, but what we have done with the present law is to build the scientific advisory committee into the cancellation proceedings. It is difficult to find a panel to sit as scientific advisers, on a scientific advisory committee. There are always all kinds of interests that crop up and make many scientists reluctant to sit on such a committee. The National Academy of Science has shown some reluctance to continue to participate in proposing members of the scientific advisory committee, so we have trouble finding people who will sit.

Then, once we have gone through that we have a public hearing in which any scientist can come in and express his view as to whether we should cancel it or continue its use; so, it looks like the scientific advisory committee sounds like a good idea, but, in practice, it does really just stretch out considerably our decision process and not give us any more scientific advice to help us make a decision anyway.

Mr. SISK. If I just break in now. In line with some 6 weeks of testimony we have had here, plus what we have read about and people we have talked to, the concern of the people is the fear or the suspicion that whatever decision and however that decision is made, it may not be made on the facts. At the present time in the event a decision has to be made, and a request is made for a scientific advisory council or committee, you select one. There is one put together for that particular purpose; right?

Mr. RUCKELSHAUS. That is right.

Mr. SISK. Could there be, let us say, some kind of a permanently fixed scientific advisory group whose numbers were publicly known? Because this becomes pretty important. We have had scientists who have had 20, 30 years of experience with some of the things that you heard discussed earlier, like the eggshell syndrome, or the thin eggshell syndrome, and they have given pretty contradictory statements. Many are Ph. D's, with long lists of degrees, and medical doctors.

Knowing the people whose advice you rely on in making a decision to permit the continued use of DDT, let us say because this happens to be one of the chemicals I believe has done a lot more good than it has ever done harm—knowing it is made on the best possible advice will give reassurance to the people, the consumer, the growers, and the processors, and all of us.

Mr. RUCKELSHAUS. Well, we have now a Pesticide Advisory Committee, which is the Mrak committee. I have talked to Dr. Mrak about this problem you discussed.

Mr. SISK. Well, it is not a feature within the law.

Mr. RUCKELSHAUS. No, no, it is not, but we are expanding that committee to encompass all of the various areas of scientific expertise so that we can be sure that a decision or recommendation or report which comes from the committee will be based on every conceivable point of view. And what we are trying to do with the committee is insure that the very finest people in the field serve as members of that committee.

In addition to that, another thing that we have in the Agency is the ability to utilize the scientific talent that exists in many of the universities of the country by setting up consortiums of university people around the country so we can locate where this scientific expertise is. And when one of these decisions comes upon us very suddenly, as it often does, we can call on the best people we can find in the country to come and give us advice and sift through the evidence that has been presented.

We are in the process of doing that now. We have by no means completed it. That is not part of the law, either; but it would seem to me that it is a need that we certainly have in the Agency.

Mr. SISK. Let me say that I appreciate the opportunity to discuss this particular subject with you. It is a matter that the committee is going to have to make a decision on. Let me say that I think you have made a pretty good case. I might say that you have broad responsibility in many areas of environmental pollution. You made a statement in San Francisco about a month ago on an important water project that came near scaring some of my people to death.

The first question raised was: How much information does Mr. Ruckelshaus have about the peripheral canal to make such an evaluation? This is the power which I spoke to you about earlier. I hope all of Congress is concerned about what kind of additional power we give to you, or your successor, and this is no criticism of you personally.

Let me ask you, quickly, two other questions:

On the matter of State law, to what extent would you interpret H.R. 4152 as preempting existing State law?

Mr. RUCKELSHAUS. Well, there would be clearly new responsibilities on the States to gear their systems so that it would mesh in with the system provided under H.R. 4152, and to that extent, in order for the State system to function it would have to set up a procedure for licensing for restricted uses and the pest management consultant.

Mr. SISK. We have discussed to some extent this idea of preemption. The State of California, for example, already has a pretty substantial body of law on pesticides and insecticides which is working well, and I tell you bluntly I do not want the Federal Government pre-

emptying the field to destroy an already existing program that is doing a job and meeting the needs and protecting the people.

Now, I realize that there may have to be preemption to the extent of the setting of minimum standards. Would you comment on that as you interpret what H.R. 4152 would do?

Mr. RUCKELSHAUS. I would, first, Mr. Sisk, call your attention to section 19-C which provides that nothing in this act shall be construed as limiting the authority of the State or political subdivision thereof to regulate the sale or use of a pesticide within its jurisdiction insofar as regulation does not permit such sale or use as is prohibited under the authority of this act.

So, in this instance, where we prohibited the sale of a pesticide or acted through suspension or cancellation, the State could use that pesticide in its State only in violation of that prohibition.

Mr. SISK. The language you are referring to seems, on the one hand, to be an exemption from preemption, and yet taking it back with the other.

Mr. RUCKELSHAUS. Well, there would undoubtedly be some new responsibility placed on the State, but, in the true sense of preemption, it is not preempting the State.

Mr. SISK. Just one other question, Mr. Chairman.

There is the matter of indemnification. This bill provides for recalling stocks of suspended pesticides, insecticides. This is causing a problem because sometimes a substantial stock may be found in the hands of a farmer, a grower, or a user, a retailer, or a distributor. An absolute suspension, as is sometimes done arbitrarily can cause a heavy loss. In my own area just recently we lost millions of dollars through what I thought was a terrible mistake with cyclamates and the cyclamate situation. These are the kinds of things that are scaring people to death about giving Federal agencies the powers to sometimes destroy economically a great number of people.

What about indemnification?

Do you feel that there should be any if, because of some imminent hazard, you should, in order to protect the public, have to step in and suspend or cancel the use of an insecticide? Should there be indemnification?

There is nothing in the bill that addresses itself to that now.

Mr. RUCKELSHAUS. No, there is nothing in the bill that addresses itself to that now.

Mr. SISK. I know that.

Mr. RUCKELSHAUS. I said to the committee when I was in the Justice Department, on the question of cyclamates, that indemnification is one of the most complicated subjects that I have ever addressed myself to, and I started out believing one thing and ended up about 180 degrees the other way.

Mr. SISK. Some of us have been all the way around.

Mr. RUCKELSHAUS. And the development of a nationwide policy on indemnification, when any kind of goods are condemned for whatever reason, is a very difficult thing to do. I wonder in this case, where it was found through another test that had not been made previously that a particular pesticide was hazardous and, therefore, could no longer be used—and there was a stop sale, and everybody had to keep their stock of the pesticide—who should bear the burden of the financial loss?

If you view it in terms of protecting society, by stopping the use of the hazardous substance, then, it ought to be society that pays for it, because society, is the primary beneficiary. But a manufacturing concern or a retail outlet or even a farmer purchases it with the full knowledge that this is a possibility, that it could happen, and I think it has got to be made clear to him that this is a possibility.

I think that what we have to do with this subject is address it clearly so that everybody understands, and then it does not seem to me to be quite as inequitable. I think the question is whether costs should be borne by society, or whether that is a risk of anyone in producing a product that might be found to be hazardous. I am frank to say that I cannot really decide at this moment.

MR. SISK. I am sure, Mr. Ruckelshaus, you are familiar with the testimony we have had, and we have had reams of testimony. I guess almost millions of words of testimony here. A number of chemical companies, at least 12, maybe even more, have cut back or completely stopped any further research in pesticides, insecticides, fungicides, rodenticides. They have done this, because frankly, this is an emotional outcry which is most unscientific and unfortunate, the biggest bunch of tomfoolery we have ever been faced with—brought about, unfortunately, by too many public statements by public officials creating undue fears.

Now, what are we going to do, to have to do, to continue?

We want to continue this research, in coming up with better remedies and doing a better job with better pesticides?

This is a matter of economic consideration of importance. This committee has to determine whether we should have indemnification. But we have had some rather serious statements about the cutback in research today going on in this field. It alarms me—that apparently sometimes companies have just—well, completely thrown in the sponge and said "This is it."

MR. RUCKELSHAUS. I have seen the same statement, Mr. Sisk, and I think that the Federal Government is increasing its research into this area, maybe not as fast as we should, but we are increasing it. I also believe that if we get a system of regulation that can give the chemical companies a means of predicting what the ultimate results of their research might be, so that they can be sure that if they do certain things, make certain tests and come up with a certain kind of pesticide, that there will be a profit at the end of it, because that is the purpose of the company to begin with, and there is a lot greater likelihood that they will put capital into research efforts.

I think the problem is now that we have a registration system and a mechanism that is crude in terms of controlling these substances, so that you either, in a sense, cancel it or suspend it, or allow it to be used possibly in an indiscriminate way that does not give the kind of predictability to the end result of research that makes it financially feasible. And although I know that some of the chemical companies are not in complete agreement with this analysis, I believe that through some more sensible system of regulation than we now have that there will be more incentive for chemical companies to do the kind of research necessary to develop new and more ecologically precise pesticides than we now have that will be profitable to them and profitable to society.

Mr. SISK. Well, I think there we can end it.

I want to commend you on your frankness.

And to conclude, let me hope, then, in line with the discussion you had with Mr. Goodling earlier, that you only have one responsibility, that you do not ignore economics in your dedication to protection of the environment.

Mr. RUCKELSHAUS. Yes, Mr. Sisk. If I ignored economics, I might, in addition, be ignoring the results of pollution which are very economically damaging to millions. Economics, you know—these terms all mean different things to different people, and that is one of the things—and I think the philosophy of how I will run the Agency probably will be more clearly spelled out in the decisions we make.

Mr. SISK. Thank you, Mr. Chairman.

Mr. ABERNETHY. (presiding). Mr. Bergland?

Mr. BERGLAND. I have no questions, Mr. Chairman.

Mr. ABERNETHY. Are there further questions?

Mr. Purcell wishes to insert in the record this paper and, without objection, permission is granted.

(The paper referred to, a copy of an ad appearing on page 15 of the Saturday Review, November 7, 1970, follows:)

[From the Saturday Review . . . page 15, November 7, 1970]

ANYONE WHO READ THE RECENT PRESS REPORTS ON DDT AND CANCER IS PROBABLY ASKING, IS ANYONE DOING ANYTHING ABOUT IT?

Yes.

Up to now the National Audubon Society has been a primary force in a relentless battle to ban DDT.

But from now on it has to be you and the National Audubon Society.

Here's why.

THE WORLD'S NO. 1 POLLUTANT BECOMES THE MAIN THREAT TO SURVIVAL

The U.S. chemical industry is producing 140 million pounds of DDT this year. For which the American public will continue to pay a high price. In the form of a ravaged ecosystem and extinct wildlife. More and more poisoned food and water. And the threat of cancerous tumors and birth defects.

WHILE WASHINGTON DRAGS ITS FEET, THE PRO-POISON PRESSURE GROUPS PREPARE FOR RENEWED ASSAULTS ON THE ENVIRONMENT

The opposition to ecological sanity is formidable. The agricultural community, Woolen mills and foresters. The chemical industry. Which, unfortunately, continues to be supported by homeowners, gardeners, and outdoorsmen who should be reading labels and boycotting poisons that endanger their own families.

Government standards allow a certain amount of DDT contamination on your food. The trouble is, there's not enough money or manpower to police all the excesses resulting from overspraying by overzealous farmers. So, even though you pay taxes to have your foods inspected, you get poisoned anyway.

THERE ARE ALTERNATIVES TO SPRAYING THE AIR WITH A CANCER AGENT

To name a few: safer pesticides like desiccants, pyrethrins, malathion, and nicotine sulphate. And crop rotation. And water control—which removes stagnant water where mosquitoes breed.

INVEST \$10. HELP REVERSE THE AGE OF SELF-DESTRUCTION

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Mr. ABERNETHY. Mr. Ruckelshaus, we certainly appreciate your appearance, the fine statement that you made and your cooperation this morning.

The committee will stand adjourned.

(Whereupon, at 1:05 p.m., the committee adjourned to reconvene subject to the call of the Chair.)

SPEECH BEFORE THE
NACA REGULATORY CONFERENCE
HONORABLE GEORGE E. BROWN, JR.
OCTOBER 19, 1983
WASHINGTON, D.C.

IT IS BOTH AN HONOR AND A PRIVILEGE TO ADDRESS SUCH A DISTINGUISHED GROUP OF CORPORATE OFFICIALS ON THE TOPIC OF FUTURE REGULATORY CHALLENGES INVOLVING PESTICIDES. I HAVE A FEW IDEAS ON THIS TOPIC, AND AM PLEASED TO HAVE SUCH A TIMELY OPPORTUNITY TO SHARE THEM WITH YOU.

I HAVE FOR SOME TIME BEEN PERSONALLY CONCERNED AND INTERESTED IN SCIENTIFIC AND ENVIRONMENTAL POLICY ISSUES. ACCORDINGLY, I HAVE TRIED WHENEVER POSSIBLE TO PLAY A CONSTRUCTIVE ROLE IN LEGISLATION AND BUDGETARY ACTIONS AFFECTING SCIENCE, THE ENVIRONMENT, AND PUBLIC HEALTH POLICY. IN EARLY 1981, I ASSUMED THE CHAIRMANSHIP OF THE AGRICULTURE SUBCOMMITTEE WITH JURISDICTION OVER THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT STATUTE--AFFECTIONATELY KNOWN AS FIFRA TO MANY OF US.

AS YOU ALL KNOW, FIFRA IS A VERY COMPLEX STATUTE. IT HAS THE ESSENTIAL FEATURES OF AN ENVIRONMENTAL LAW. IT IS ALSO A FINELY TUNED INSTRUMENT GOVERNING INTRA-INDUSTRY ECONOMIC RELATIONS. FIFRA ALSO ASPIRES TO BALANCE THE MANY SOMETIMES

CONFLICTING INTERESTS OF INDUSTRY, THE AGRICULTURAL SECTOR, OTHERS DEPENDENT ON PESTICIDES, AND PUBLIC INTEREST GROUPS. PAST COURT RULINGS AND ADMINISTRATIVE POLICY CHANGES HAVE FURTHER COMPLICATED THE DAY-TO-DAY WORKINGS OF THE PESTICIDE PROGRAM.

TWO PENDING COURT CASES, I MIGHT ADD, MAY DO CONSIDERABLY MORE DAMAGE THAN MERELY COMPLICATING THE ADMINISTRATION OF THE ACT. THE MONSANTO CASE, NOW SCHEDULED TO BE HEARD BY THE SUPREME COURT THIS TERM, CHALLENGES THE CONSTITUTIONALITY OF THE BASIC DATA COMPENSATION AND DISCLOSURE PROVISIONS OF FIFRA. ANOTHER MAJOR LAWSUIT, FILED BY THE NATURAL RESOURCES DEFENSE COUNCIL, AFL-CIO AND OTHERS, QUESTIONS ON SEVERAL GROUNDS THE LEGALITY OF SO-CALLED DECISION-CONFERENCES. SEVERAL SUCH MEETINGS WERE CONVENED BETWEEN EPA AND PESTICIDE REGISTRANTS AND USERS DURING THE PROCESS OF TRYING TO NEGOTIATE MUTUALLY ACCEPTABLE REGULATORY ACTIONS. THE STRATEGY OF TRYING TO RAPIDLY CONCLUDE LONG-STANDING, CONTROVERSIAL PESTICIDE REGULATORY PROCEEDINGS THROUGH A VOLUNTARY "NEGOTIATED SETTLEMENT" BETWEEN THE AGENCY AND PESTICIDE MANUFACTURERS AND USERS MAY PROVE, IN THE END, ONE OF THE MORE COSTLY AND DETRIMENTAL REGULATORY REFORM EXPERIMENTS ATTEMPTED BY THIS ADMINISTRATION.

NO ONE CAN PREDICT YET THE FALLOUT FROM THESE TWO COURT CASES. IT IS CLEAR, THOUGH, THAT IT COULD BE CONSIDERABLE, WILL PERSIST FOR YEARS, AND MAY NOT NECESSARILY BE BENEFICIAL. I PERSONALLY AM AFRAID THE RULINGS, IN THE END, WILL CREATE MORE

PROBLEMS THAN THEY RESOLVE. ALSO CONSTRUCTIVE AGENCY ACTIONS AND INITIATIVES MIGHT MOVE FORWARD MORE SLOWLY, OR BE UNDERCUT, IF RULINGS ADVERSE TO THE AGENCY FORCE MAJOR CHANGES IN HOW THE PROGRAM IS ALLOWED TO FUNCTION.

IT IS RARELY POSSIBLE FOR EPA TO TAKE SIGNIFICANT REGULATORY OR ADMINISTRATIVE ACTIONS ON ANYTHING WITHOUT FACING, EITHER IN THE COURTS OR CONGRESS, DETERMINED OPPOSITION. SOME OF US IN CONGRESS BELIEVE THE TIME HAS COME TO MAKE LIFE A LITTLE EASIER IN THE PESTICIDE PROGRAM. CONTROVERSY AND CONFLICT CANNOT BE LEGISLATED AWAY. EPA'S PESTICIDE PROGRAM WOULD RUN MORE SMOOTHLY, THOUGH, IF THE AGENCY WERE GRANTED GREATER AUTHORITY IN SOME KEY AREAS AND LESS DISCRETIONARY FLEXIBILITY IN OTHER AREAS. A SET OF SUCH CHANGES, IN FACT, FORM THE HEART OF H.R. 3818, THE "FIFRA REFORM ACT," SPONSORED BY CONGRESSMAN HARKEN, A BILL NOW PENDING BEFORE THE SUBCOMMITTEE.

THIS BILL WOULD REDUCE AGENCY DISCRETION IN MANY AREAS. AMONG THE KEY CHANGES ARE AMENDMENTS TIGHTENING UP THE CRITERIA GOVERNING EMERGENCY EXEMPTIONS AND SPECIAL LOCAL NEED REGISTRATIONS GRANTED UNDER SECTIONS 18 AND 24(c) OF FIFRA. THESE SECTIONS OF FIFRA WERE PASSED FOR GOOD REASONS AND NEED TO BE PRESERVED. I WANT TO REASSURE THIS AUDIENCE THAT THE SUBCOMMITTEE FULLY APPRECIATES THE ECONOMIC DILEMMA FACED BY PESTICIDE MANUFACTURERS WANTING TO PROVIDE USEFUL PRODUCTS FOR MINOR USES. WE WILL CONTINUE TO WORK TOWARD BETTER SOLUTIONS OF

THIS PROBLEM, AND WILL CAREFULLY MONITOR HOW OTHER CHANGES IN THE ACT MIGHT ADVERSELY IMPACT PROGRESS IN THIS AREA. WE MUST FACE THE FACT, THOUGH, THAT THE NUMBER OF REGISTRATION ACTIONS ROUTINELY MOVING THROUGH THESE CHANNELS HAS MUSHROOMED OUT OF CONTROL IN THE LAST FEW YEARS. A WHOLE HOST OF ADVERSE CONSEQUENCES ARE NOW EMERGING FROM OVER-RELIANCE ON THESE AVENUES FOR MARKET PENETRATION. IT IS CLEAR THAT IN MANY CASES THE SECTION 3 REGISTRATION PROCESS HAS BEEN SYSTEMATICALLY CIRCUMVENTED. HENCE, THE DEGREE OF PROTECTION AFFORDED PUBLIC HEALTH AND THE ENVIRONMENT BY SECTION 3 OF FIFRA HAS BEEN COMPROMISED, AND AN UNNECESSARY DRAIN HAS BEEN PLACED ON BOTH STATE AND FEDERAL REGULATORY PROGRAMS.

IN MANY OTHER SECTIONS OF FIFRA, THE AGENCY'S DISCRETIONARY AUTHORITY TO TAKE REGULATORY ACTIONS HAS BEEN USED HESITANTLY, IF AT ALL. THE LACK OF REAL PROGRESS IN RE-REGISTRATION IS THE MOST GLARING AND TROUBLESOME EXAMPLE. EPA'S FAILURE TO MORE EXPEDITIOUSLY FILL EXISTING DATA GAPS THROUGH THE DATA CALL-IN PROGRAM IS ANOTHER. IN FACT, THE DATA CALL-IN PROGRAM IS MOVING SO SLOWLY THAT SOME REGISTRANTS ARE NOW VOLUNTARILY INITIATING THE TESTS NEEDED TO FILL DATA GAPS. THEY ARE ACTING ON THEIR OWN LARGELY BECAUSE OF CONCERN OVER FUTURE PRODUCT LIABILITY JUDGMENTS AND REGULATORY ACTIONS THAT COULD ARISE WHEN SOME AS YET UNKNOWN HAZARD IS IDENTIFIED. THE HARKIN BILL STRENGTHENS BOTH THE MANDATE AND TOOLS GIVEN TO EPA TO ACCOMPLISH

RE-REGISTRATION, A TASK EVERYONE ACCEPTS AS ESSENTIAL IF THE FIFRA STATUTE IS TO FULFILL ITS STATED OBJECTIVES.

OVERLY BROAD DISCRETIONARY AUTHORITIES ARE NOT THE ONLY REASON THE AGENCY REGULARLY RUNS INTO TROUBLE CARRYING THROUGH WITH COMMON SENSE REGULATORY ACTIONS. THE FIFRA IS VAGUE OR SILENT IN SEVERAL IMPORTANT AREAS SUCH AS INDOOR PESTICIDE STANDARDS, RESPONDING TO FRAUD AND MISREPRESENTATION OF DATA, AND TAKING PRECAUTIONARY STEPS TO MINIMIZE FUTURE PROBLEMS SUCH AS GROUNDWATER CONTAMINATION. THE HARKIN BILL ALSO ADDRESSES EACH OF THESE AREAS, ALTHOUGH IT DOES NOT, IN MY VIEW, CONTAIN THE FINAL WORD ON ANY OF THEM.

THE MOST FAR-REACHING, AND PROBABLY CONTROVERSIAL, CHANGES IN THE BILL ARE SUBSTANTIVE AND PROCEDURAL ATTEMPTS TO ELEVATE THE WEIGHT GIVEN TO HUMAN HEALTH HAZARDS IN THE BALANCING OF PESTICIDE RISKS AND BENEFITS. MOST OF THE AMENDMENTS REFLECT CONCEPTS VERY FAMILIAR TO THIS AUDIENCE. THE PRIVATE RIGHT-TO-SUE AND THE SECTION 6(b) STANDING AMENDMENTS WOULD GIVE PUBLIC INTEREST GROUPS GREATER ACCESS TO FEDERAL COURTS TO CHALLENGE PESTICIDE REGULATORY ACTIONS AND INCIDENTS. THESE AMENDMENTS HAVE BEEN DEBATED IN THE CONTEXT OF MANY ENVIRONMENTAL LAWS IN ADDITION TO FIFRA. THE BILL WOULD ESTABLISH A NEW RISK CRITERION FOR HUMAN HEALTH EFFECTS--THE SO-CALLED "WILL ENDANGER" STANDARD. THE PRECISE LEGAL IMPACT OF THIS CHANGE IS NOT CLEAR, ALTHOUGH IT WOULD FUNDAMENTALLY CHANGE SEVERAL PARTS OF THE

STATUTE. FOR THESE REASONS, THIS IS ONE PART OF THE BILL THAT WILL REQUIRE CONSIDERABLE TIME TO FULLY EVALUATE.

MANY PEOPLE HAVE WONDERED WHY I JOINED CONGRESSMAN HARKIN IN CO-SPONSORING H.R. 3818. I RECOGNIZE THAT CO-SPONSORSHIP OF THIS BILL MIGHT BE SEEN BY SOME AS AN UNCHARACTERISTIC ACT ON THE PART OF THE CHAIRMAN OF THE HOUSE AGRICULTURE SUBCOMMITTEE WITH JURISDICTION OVER THE FIFRA STATUTE. I DO NOT SUPPORT ALL THE PROVISIONS OF THIS BILL. ALSO, THERE ARE SEVERAL KEY PROBLEMS THAT ARE NOT ADDRESSED AT ALL BY THE BILL THAT I HOPE ARE INCLUDED IN ANY PACKAGE OF AMENDMENTS PASSED BY THE SUBCOMMITTEE. AMONG THE IMPORTANT ISSUES NOT TOUCHED BY H.R. 3818 ARE AUTHORITY FOR AN EPA ADMINISTERED LABORATORY AUDIT PROGRAM, A MEANINGFUL SET OF REFORMS IN THE AREA OF PESTICIDE EXPORTS--LIKE THOSE CONTAINED IN CONGRESSMAN HEFTTEL'S BILL, H.R. 3254, AND A MAJOR RESTRUCTURING OF THE FINES AND OTHER PENALTIES IMPOSED IN THE EVENT FIFRA IS VIOLATED.

I THINK THE HARKIN BILL IS AN APPROPRIATE AND TIMELY LEGISLATIVE INITIATIVE. WE HELD A HEARING ON THIS BILL OCTOBER 6TH, AND HAVE SCHEDULED A SECOND HEARING NOVEMBER 2 TO HEAR TESTIMONY FROM EPA ADMINISTRATOR WILLIAM RUCKELSHAUS, AMONG OTHERS. I AM ALSO SCHEDULING TWO DAYS FOR MARKUP OF H.R. 3818 AND H.R. 3254 IN EARLY NOVEMBER. UNLESS THERE IS A DRAMATIC CHANGE IN ATTITUDES, I DO NOT ANTICIPATE SWIFT PASSAGE OF THESE BILLS THIS SESSION, BUT I AM DETERMINED TO AT LEAST TRY. I KEEP HOPING THAT THE

CONCERNED PARTIES WILL SIMULTANEOUSLY RECOGNIZE THAT THE STATUS QUO IS IMPOSING EXCESSIVELY HIGH COSTS ON THE PUBLIC, AGRICULTURE, AND THE INDUSTRY. IN LIGHT OF MY CURRENT RESPONSIBILITIES, IT IS FORTUNATE THAT I AM BOTH A REALIST AND PATIENT.

DURING THE REMAINDER OF THIS CONGRESS, THE SUBCOMMITTEE WILL CONSIDER ANY FEASIBLE LEGISLATIVE AND ADMINISTRATIVE SOLUTIONS TO FIFRA PROBLEMS. I THINK AN ADEQUATE RECORD HAS NOW BEEN DEVELOPED TO BOTH DEFINE THE MAJOR PROBLEMS AND FASHION EFFECTIVE SOLUTIONS. OF COURSE, MUCH OF TODAY'S DISENCHANTMENT WITH ENVIRONMENTAL STATUTES, NOT JUST FIFRA, STEMS FROM THE GENERAL COLLAPSE OF PUBLIC CONFIDENCE IN THE EPA.

IT NEVER HAS BEEN EASY TO SUCCESSFULLY IMPLEMENT RADICAL CHANGES OF POLICY IN ANY COMPLEX PROGRAM. IT WON'T BE IN 1983 FOR THE PESTICIDE PROGRAMS, NOR WAS IT FOR FORMER ADMINISTRATOR BURFORD DURING HER TENURE. MY SENSE IS THAT REGULATORY REFORM AND OTHER MAJOR CHANGES WITHIN THE BURFORD EPA CAME WITH SURPRISING EASE AT FIRST. BUDGET AND PERSONNEL CUTS, ALONG WITH SUBSTANTIVE POLICY CHANGES, COMBINED AND REINFORCED EACH OTHER IN UNANTICIPATED WAYS. ALL OF A SUDDEN PEOPLE REALIZED THAT MANY NEW CHEMICALS, INCLUDING HUNDREDS OF PESTICIDE REGISTRATIONS, WERE ZOOMING THROUGH THE AGENCY AS IF ALL THE STOP SIGNS OF THE REGULATORY PROCESS HAD BEEN CHANGED TO GREEN LIGHTS. CONVERSELY, AND EQUALLY DRAMATIC, REGULATORY ACTIONS AGAINST SUSPECT

CHEMICALS, HAZARDOUS WASTE DUMPS AND THE LIKE PROGRESSED AT A SNAIL'S PACE, IF AT ALL.

IN THE OFFICE OF PESTICIDES AND TOXIC SUBSTANCES (O.P.T.S.), THE APPOINTMENT OF A SCIENTIST AS ASSISTANT ADMINISTRATOR WAS WIDELY PRAISED AS A GOOD STEP TOWARD UPGRADING THE SCIENTIFIC CAPABILITY OF THE AGENCY. DR. TODHUNTER ASSUMED A LEADERSHIP ROLE IN THE ADMINISTRATION'S EFFORT TO CHANGE FEDERAL CANCER POLICY. DURING THE SAME PERIOD, THE O.P.T.S. COMPLETED SEVERAL MAJOR REGULATORY ACTIONS PREDICATED ON A NEW VIEW OF HOW CANCER RISKS SHOULD BE ASSESSED. IN MID-1982, THE SUBCOMMITTEE I CHAIR QUITE INNOCENTLY BEGAN AN INVESTIGATIVE STUDY OF HOW THE PESTICIDE PROGRAM WORKS. BEFORE LONG, THE SUBCOMMITTEE COMPILED EVIDENCE SUGGESTIVE OF A MARKED CHANGE IN CANCER POLICY AS EMBODIED IN SEVERAL RECENT PESTICIDE ACTIONS. AS IS OFTEN THE CASE, EPA STAFF SCIENTISTS AND OTHER PERSONNEL WERE VERY HELPFUL AND CANDID IN POINTING OUT INSTANCES WHERE NEW SCIENTIFIC PRINCIPALS HAD, IN FACT, BEEN INTRODUCED INTO THE DECISION-MAKING PROCESS.

TOWARD THE END OF 1982, SUBCOMMITTEE STAFF PREPARED AN INVESTIGATIVE REPORT ON THE PESTICIDE PROGRAM WHICH, AMONG OTHER THINGS, DISCUSSED IN SOME DETAIL THE RECENT CHANGES IN EPA'S CANCER POLICY. THE REPORT STRUCK A RAW NERVE IN THE AGENCY. DR. TODHUNTER CONTACTED ME IMMEDIATELY TO REGISTER HIS STRONG OBJECTIONS TO THE REPORT, ESPECIALLY THE CANCER CHAPTER. IN A

DECEMBER, 1982, LETTER TO ME FORWARDING THE AGENCY'S INITIAL COMMENTS ON THE REPORT, HE LABELLED THE CANCER CHAPTER "A POLITICAL DIATRIBE." FROM THEN ON THE AGENCY TRIED REPEATEDLY IN LETTERS AND TESTIMONY TO DENY THAT ANY SUBSTANTIVE CHANGES HAD BEEN MADE IN THE AGENCY'S CANCER POLICY. THE DEBATE QUICKLY POLARIZED, AND BOGGED DOWN IN SEMANTICS. MUCH TIME WAS SPENT TRYING TO DIFFERENTIATE BETWEEN A CHANGE IN CANCER POLICY IN CONTRAST TO A CONTINUING EVOLUTION OF CANCER POLICY.

THIS DEBATE WAS UNFORTUNATE FOR SEVERAL REASONS. IT PRECLUDED A RATIONAL DIALOGUE BETWEEN THE AGENCY AND THE SUBCOMMITTEE ON HOW LONG-OVERDUE IMPROVEMENTS IN CANCER RISK ASSESSMENT PROCEDURES COULD BE INTRODUCED IN THE PESTICIDE PROGRAM. THE SUBCOMMITTEE WAS READY, I BELIEVE, TO SERIOUSLY ENTERTAIN, AND PERHAPS SUPPORT, MANY OF THE SUBSTANTIVE CHANGES IN POLICY THAT HAD ALREADY BEEN INCORPORATED IN CERTAIN KEY O.P.T.S. DECISIONS. UNFORTUNATELY, WE NEVER GOT TO THAT DISCUSSION BECAUSE THE AGENCY REFUSED TO PUBLICLY ACKNOWLEDGE THAT SUBSTANTIVE CHANGES HAD BEEN ADOPTED, OR WERE NEEDED. THE FULL IRONY OF THE DEBATE BECAME OBVIOUS A FEW MONTHS AGO WHEN A JUNE, 1981 MEMORANDUM FROM ADMINISTRATOR BURFORD TO THE WHITE HOUSE SURFACED. THE PURPOSE OF THE MEMORANDUM WAS TO ALERT THE WHITE HOUSE TO MAJOR EPA ACTIONS THAT MIGHT PROVE CONTROVERSIAL. IT STATES THAT "ENVIRONMENTALISTS WILL BE CRITICAL BECAUSE (A PESTICIDE TOLERANCE ACTION) WOULD NOT HAVE OCCURRED UNDER CARTER

ADMINISTRATION CANCER POLICY--A POLICY THIS ADMINISTRATION IS CHANGING."

THE CANCER POLICY DEBATE, WHICH EXTENDED FAR BEYOND THE PESTICIDE PROGRAM, EXTRACTED A HEAVY TOLL ON THE AGENCY'S CREDIBILITY WITHIN THE SCIENTIFIC COMMUNITY. SOUND SCIENCE FELL BY THE WAYSIDE, VICTIM OF A POLITICAL DECISION TO PORTRAY A HANDFUL OF CONTROVERSIAL EPA REGULATORY ACTIONS AS CONSISTENT WITH THE CANCER POLICY PRINCIPALS OF PAST ADMINISTRATIONS. MOREOVER, PUBLIC DISCUSSION OF INDUSTRY-EPA CONTACTS DURING THE AGENCY'S DELIBERATIONS ON SOME CANCER CAUSING CHEMICALS DID LITTLE TO QUELL THE ALREADY HEALTHY, AND NOW GROWING, SKEPTICISM OF INDUSTRY'S INTEGRITY AND CONCERN FOR THE PUBLIC HEALTH.

THE BURFORD ERA WILL BE JUDGED AS A VERY UNFORTUNATE SETBACK IN THE NATION'S STEADY PROGRESS TOWARD IMPROVING OUR ENVIRONMENT. IT IS TOO EARLY TO TELL WHETHER THIS SAD ERA WILL ALSO CLAIM AS A VICTIM THE LONG-STANDING BIPARTISAN SUPPORT FOR ENVIRONMENTAL PROGRAMS. SUCH A POLARIZATION OF ENVIRONMENTAL ISSUES WOULD BE TRAGIC SINCE REASONABLE, BALANCED LEGISLATION BECOMES VERY DIFFICULT TO PASS WHENEVER THE UNDERLYING ISSUES BECOME HIGHLY POLITICIZED.

I THINK THIS AUDIENCE CAN APPRECIATE HOW DIFFICULT THE LEGISLATIVE PROCESS WILL BECOME IF THE PUBLIC'S DEEP CONCERNS ABOUT CANCER AND OTHER HEALTH HAZARDS ARE FURTHER EXACERBATED BY

THE EXCESSES OF PARTISAN DEBATE. THE PESTICIDE INDUSTRY, IN PARTICULAR, SHOULD BE CONCERNED ABOUT THIS POINT.

IN THE LAST FEW YEARS, CONSIDERABLE PRIVATE INVESTMENTS HAVE BEEN MADE IN A WIDE RANGE OF SCIENTIFIC ENDEAVORS AIMED AT BETTER PROTECTING THE PUBLIC HEALTH. MUCH PROGRESS HAS ALREADY BEEN MADE, YET THE PUBLIC FEELS NO SAFER. INDEED, I THINK THE RAPID PROGRESS YOU ARE MAKING MAY IRONICALLY CONTRIBUTE TO ANOTHER CRISIS OF PUBLIC CONFIDENCE IN EPA'S REGULATORY ACTIONS.

INDUSTRY-SPONSORED PESTICIDE SAFETY TESTING OFTEN INCLUDES EXPERIMENTAL WORK AT THE CUTTING EDGE OF SCIENCE. THIS WORK, IN TURN, OFTEN BECOMES THE BASIS OF NOVEL AND SOPHISTICATED SCIENTIFIC ARGUMENTS IN SUPPORT OF THE SAFETY OF A GIVEN PESTICIDE. I HOPE YOU RECOGNIZE, HOWEVER, THAT CREDIBLE INDEPENDENT VERIFICATION OF YOUR RESULTS MUST STILL BE PERFORMED BY THE EPA, OR OTHER GOVERNMENT AGENCY, BEFORE THE PUBLIC WILL ACCEPT THE VERACITY OF YOUR DATA AND THE VALIDITY OF YOUR SCIENTIFIC JUDGMENTS.

FOR EPA SCIENTISTS TO CONDUCT SUCH INDEPENDENT VERIFICATION OF YOUR WORK, THEY MUST ALSO POSSESS, OR HAVE ACCESS TO, ANALYTIC EXPERTISE AT THE CUTTING EDGE OF SCIENCE. THEY CLEARLY DO NOT AT THIS TIME IN THE PESTICIDE PROGRAM. HOW CAN WE CONTINUOUSLY UPGRADE SCIENTIFIC SKILLS IN EPA SO THAT WE CAN REST ASSURED, AND CONVINCE THE PUBLIC, THAT REGULATORY ACTIONS ARE BASED ON VALID SCIENCE CONSISTENT WITH THE AGENCY'S MANDATE TO PROTECT THE

PUBLIC HEALTH? THIS FUNDAMENTAL QUESTION AND PROGRAM CHALLENGE WILL NOT GO AWAY. THE PERCEIVED NEED FOR DRAMATIC ACTION IN THIS AREA MAY SNOWBALL IF A SERIES OF PRESS ACCOUNTS EMERGES OVER THE NEXT SEVERAL MONTHS ALLEGING THAT PESTICIDE REGULATORY ACTIONS HAVE BEEN BASED ON UNCRITICAL OR INCORRECT EPA EVALUATIONS OF INDUSTRY SPONSORED SCIENCE THAT IS SUBSEQUENTLY FOUND TO BE FAULTY, FRAUDULENT, OR IMPLAUSIBLE.

I WOULD LIKE TO STRESS ONE BASIC POINT THIS MORNING. WHEN THERE IS TENSION AND DISTRUST AMONG ACTIVE, POLITICALLY ASTUTE CONSTITUENCIES, ISSUES WILL CONTINUOUSLY EMERGE AND THE DEBATE WILL BE PUSHED TOWARD EXTREMES. ESPECIALLY WITHIN A CONGRESSIONAL FORUM, THESE FORCES HAVE TO BE CONSCIOUSLY AND SYSTEMATICALLY RESISTED OR THEY SOON WILL OVERPOWER EVEN THE MOST CONSCIENTIOUS AND DIPLOMATIC CHAIRMAN.

PESTICIDE ISSUES IN PARTICULAR TEND TO BE CLEARLY DRAWN AND FULLY EMBELLISHED WITH WARNINGS OF DIRE CONSEQUENCES. BOTH THE ENVIRONMENTALISTS AND INDUSTRY ARE REPEATEDLY GUILTY OF GETTING WAY BEYOND THE FACTS IN AN EFFORT TO FORCEFULLY MAKE A POINT. IN LIGHT OF THE TESTIMONY PRESENTED TO THE SUBCOMMITTEE ON PESTICIDE ISSUES THE LAST FEW YEARS, IS IT ANY WONDER SOME OF US ARE BECOMING IMPATIENT WITH THE LEGISLATIVE PROCESS?

WE ARE NOW ENTERING A PERIOD WHEN BOTH LEGISLATIVE AND ADMINISTRATIVE CHANGES IN THE PESTICIDE PROGRAM ARE DESPERATELY

NEEDED. I HOPE THE CHANGES ARE WELL-CONCEIVED AND CONSTRUCTIVE. THIS HAS NOT ALWAYS BEEN THE CASE IN THE PAST. THERE ARE SEVERAL CURRENT AND PRESSING ISSUES BEFORE THE AGENCY WHICH WILL TEST OUR COLLECTIVE PROBLEM-SOLVING SKILLS, MOST PARTICULARLY THE INDUSTRIAL BIO-TEST (IBT) SCANDAL, THE SO-CALLED CUT-AND-PASTE PROBLEM, AND THE CONTAMINATION OF GROUNDWATER WITH AGRICULTURAL CHEMICALS.

I KNOW THAT MANY PEOPLE IN THE CHEMICAL INDUSTRY FIND IT HARD TO BELIEVE THAT THE IBT CASE IS STILL MAKING NEWS. YOU MUST RECOGNIZE THAT IBT HAS BECOME FAR MORE THAN THE STORY OF A LARGE TOXICOLOGY LABORATORY THAT GOT IN TROUBLE WITH THE LAW BECAUSE IT TOOK ON MORE WORK THAN IT COULD HANDLE. IN THE NEXT SEVERAL WEEKS, NEW STORIES ARE SURE TO APPEAR WHEN THE VERDICT IN THE IBT TRIAL IS REACHED. ALSO, THE CONTROVERSY SURROUNDING HOW EPA HAS HANDLED THE IBT AFFAIR HAS BY NO MEANS COME TO A HEAD. THESE AND RELATED STORIES ON LABORATORY DATA AUDIT PROGRAM DEFICIENCIES WILL RAISE FURTHER DOUBTS REGARDING THE INTEGRITY OF BOTH THE INDUSTRY AND THE AGENCY. AT THE HEART OF THESE STORIES WILL BE THE CONTENTION OF SOME, AND THE CONCERN OF NEARLY EVERYONE, THAT THE CHEMICAL INDUSTRY AND EPA ARE NOT ADEQUATELY PROTECTING THE PUBLIC'S HEALTH.

IT IS DISTURBING TO ME, AND CERTAINLY MUST BE DISTURBING TO THIS AUDIENCE, THAT SUCH FUNDAMENTAL QUESTIONS KEEP ARISING IN THE WAKE OF IBT AND RELATED PROBLEMS THAT HAVE NOW BEEN THE

SUBJECT OF CONCERTED REMEDIAL ATTENTION FOR THE BETTER PART OF A DECADE. THE COLLECTIVE INDUSTRY AND EPA RESPONSE TO THE IBT CASE HAS, IN RETROSPECT, BEEN UNFORTUNATE BOTH FOR EPA AND THE CHEMICAL INDUSTRY. MORE THAN SEVEN YEARS HAVE PASSED SINCE THE EXTENT OF THE IBT CASE WAS, FOR ALL INTENTS AND PURPOSES, CLEAR--MORE THAN AMPLE TIME FOR ALL NECESSARY REPLACEMENT STUDIES TO BE COMPLETED AND SUBMITTED TO THE AGENCY. YET WE LEARN NOW THAT CONSIDERABLY LESS THAN ONE-QUARTER OF THE INVALID STUDIES HAVE ACTUALLY BEEN REPLACED. THE AGENCY'S LACK OF CANDOR AND ACCURACY IN ITS PUBLIC DISCUSSIONS OF IBT HAVE ADDED ADDITIONAL FUEL TO THE FIRE, AND THE END OF THE IBT CASE IS STILL NOWHERE IN SIGHT.

THINK HOW MUCH SIMPLER IT WOULD HAVE BEEN IF EPA HAD DECLARED ALL IBT STUDIES INVALID BACK IN 1977 OR 1978, AND REQUIRED ALL STUDIES TO BE REDONE AND SUBMITTED AS SOON AS PRACTICABLE. SUCH AN ACTION WAS NOT TAKEN BECAUSE THE AGENCY FELT IT LACKED AUTHORITY TO DO SO UNDER FIFRA. INDEED, CLARIFYING THE AUTHORITY OF EPA TO ACT IN COMPARABLE SITUATIONS IS ONE OF THE MANY ISSUES ADDRESSED IN THE HARKIN BILL NOW BEFORE THE SUBCOMMITTEE.

ANOTHER EMERGING ISSUE OF GREAT SIGNIFICANCE NOT ADEQUATELY ADDRESSED BY PENDING LEGISLATION OR THE CURRENT LAW IS PESTICIDE CONTAMINATION OF GROUNDWATER. I AM SURE YOU ARE ALL AWARE THAT SEVERAL PESTICIDES HAVE NOW BEEN DETECTED IN GROUNDWATER IN A

NUMBER OF MAJOR AGRICULTURAL STATES, INCLUDING CALIFORNIA. RECENT POSITIVE FINDINGS HAVE LED TO ADDITIONAL MONITORING. ADDITIONAL MONITORING IS, IN SOME CASES, PRODUCING MORE POSITIVE FINDINGS. WHILE IT IS TOO EARLY TO MAKE ANY DEFINITIVE PREDICTIONS REGARDING THE EXTENT OF PESTICIDE CONTAMINATION IN GROUNDWATER, THE TIME FOR GRAVE CONCERN AND CONCERTED ACTION HAS CLEARLY ARRIVED.

I THINK IT IS NOW CLEAR THAT SOCIETY HAS AND WILL PAY A HEAVY PRICE FOR OUR GENERALLY LAX ATTITUDE THE LAST SEVERAL YEARS TOWARD ENVIRONMENTAL MONITORING. OF COURSE, SOME PEOPLE WARNED OF THIS POSSIBILITY YEARS AGO. IF THE ENVIRONMENTAL MONITORING PROGRAM ENVISIONED BY SECTION 20 OF FIFRA HAD BEEN SERIOUSLY IMPLEMENTED FOLLOWING PASSAGE IN 1978, WE WOULD HAVE A MUCH BETTER DATA BASE WITH WHICH TO EVALUATE THE SEVERITY OF CONTEMPORARY GROUNDWATER CONTAMINATION FINDINGS.

IN FACT, A GOOD FEDERAL MONITORING PROGRAM PROBABLY WOULD HAVE DETECTED YEARS AGO AT LEAST SOME OF THE CONTAMINATION INCIDENTS NOW COMING TO LIGHT LARGELY THROUGH STATE INITIATIVES. INCIDENTALLY, AMENDMENTS IN THE HARKIN BILL ATTEMPT, ONCE AGAIN, TO DIRECT THE AGENCY'S ATTENTION TO THE VITAL IMPORTANCE OF SYSTEMATIC MONITORING. WITHOUT SOLID MONITORING DATA, WE DON'T KNOW WHERE PROBLEMS EXIST, WHERE TO EXPECT PROBLEMS, AND WHERE WE SHOULD NOT WORRY. THINK HOW VALUABLE SUCH A DATABASE WOULD BE IN

THE NEXT SEVERAL MONTHS AS PRESSURES BUILD TO DO SOMETHING
DRAMATIC TO PROTECT GROUNDWATER RESOURCES.

THERE ARE A HOST OF POLICY ISSUES RELATED TO HOW WE SHOULD
AVOID AND RESPOND TO PESTICIDE GROUNDWATER CONTAMINATION. IN THE
SHORT RUN, GROWERS IN CALIFORNIA'S CENTRAL VALLEY, POTATO FARMERS
ON LONG ISLAND, SOYBEAN FARMERS IN THE SOUTHEAST, AND OTHER YET
UNIDENTIFIED AGRICULTURAL ENTERPRISES AROUND THE COUNTRY,
FACE--OR MAY SOON FACE--THE DILEMMA OF SWITCHING CROPPING
PATTERNS OR SUFFERING SIZEABLE CROP LOSSES TO ESTABLISHED PESTS.
VERY SOON NOW, IT MAY BE THE REASONED JUDGMENT OF EXPERTS IN THE
EPA AND ELSEWHERE THAT HIGHLY TOXIC, STABLE, SOIL INJECTED
FUMIGANTS AND NEMATOCIDES SIMPLY SHOULD NOT BE USED IN SOME
AREAS. PRONOUNCED SHIFTS IN CROPPING PATTERNS MAY BECOME
INEVITABLE. THESE SHIFTS MAY THRUST UPON US THE NEED FOR A NEW
TYPE OF AGRICULTURAL INCENTIVE PROGRAM DESIGNED TO HELP GROWERS
MAKE THE ADJUSTMENT TO LESS PROFITABLE CROPS.

LIKewise, PUBLIC ALARM OVER THE PRESENCE OF PESTICIDES IN
GROUNDWATER WILL INEVITABLY LEAD TO GREATER ATTENTION, AT LEAST
IN SOME STATES, TO OTHER PRODUCTS REGISTERED FOR COMPARABLE USES.
WHAT, FOR EXAMPLE, MIGHT ARISE AFTER AN EXTENSIVE REVIEW OF THE
PESTICIDES LIKELY TO BE USED FOR SOIL FUMIGATION USES FOLLOWING
THE SUSPENSION OF EDB? HOW MUCH SAFER ARE THEY? HOW COMPLETE IS
THE DATA BASE ON THESE PRODUCTS? IS THERE ADEQUATE EVIDENCE TO
JUDGE THAT THESE PRODUCTS WILL NOT ALSO APPEAR IN GROUNDWATER?

AND WHAT ABOUT LIABILITY FOR CONTAMINATED AQUIFERS? UNDER EXISTING LAWS, WILL THE MANUFACTURERS OF PESTICIDES FOUND IN DRINKING WATER EVENTUALLY BE HELD LIABLE AND FORCED TO PAY COMPENSATION? HOW MUCH IS A SOLE-SOURCE AQUIFER SERVING 5 MILLION PEOPLE WORTH? WILL A JOHNS-MANVILLE-LIKE BANKRUPTCY PROCEEDING BECOME THE ONLY VIABLE STRATEGY FOR CERTAIN CHEMICAL COMPANIES FACING HUGE LIABILITY CLAIMS? I THINK IT IS SAFE TO PREDICT THAT THESE ISSUES WILL BE EXPLORED IN SOME DETAIL OVER THE NEXT SEVERAL MONTHS BY SEVERAL CONGRESSIONAL COMMITTEES, REGULATORY AGENCIES, AND OTHERS. I SUSPECT THAT THE PUBLIC'S DEEP CONCERNS ABOUT THE SAFETY OF DRINKING WATER WILL BE REINFORCED RATHER THAN DIMINISHED AS ADDITIONAL INFORMATION COMES TO LIGHT.

I HAVE ALREADY DEFINED A RATHER FORMIDABLE SET OF IMMEDIATELY PRESSING ISSUES. OTHER LESS IMMEDIATE PROBLEMS, THOUGH, ALSO DESERVE ATTENTION.

A GOOD EXAMPLE IS THE AGENCY'S ONGOING DILEMMA OVER THE APPLICABILITY OF THE DELANEY CLAUSE TO CERTAIN PESTICIDE RESIDUE TOLERANCE ACTIONS. BECAUSE OF THE DELANEY CLAUSE, THE EPA MAY NOT SET FOOD ADDITIVE TOLERANCES FOR PESTICIDES KNOWN TO CAUSE CANCER IN A VALID ANIMAL EXPERIMENT. IN RECENT YEARS, HOWEVER, THE FOOD AND DRUG ADMINISTRATION (FDA) HAS NARROWED THE APPLICABILITY OF THE DELANEY CLAUSE SOMEWHAT THROUGH A SERIES OF ADMINISTRATIVE ACTIONS. SHOULD THESE FDA POLICIES BE ADOPTED BY

EPA WHEN EVALUATING TOLERANCE PETITIONS? DO THE SCIENTIFIC JUSTIFICATIONS ADVANCED BY THE FDA IN SUPPORT OF NARROWING THE APPLICABILITY OF THE DELANEY CLAUSE APPLY TO PESTICIDE ACTIONS? HOW BIG OF AN IMPACT ON THE PUBLIC'S DIETARY EXPOSURE TO CANCER CAUSING PESTICIDE'S WOULD RESULT IF EPA FOLLOWS FDA'S LEAD IN THESE MATTERS? I RAISE THESE QUESTIONS NOT BECAUSE I KNOW THE ANSWERS, AND HAVE AFTER CAREFUL ANALYSIS, CONCLUDED THAT FDA'S NEW POLICIES SHOULD BE REJECTED BY THE EPA. I RAISE THE QUESTIONS NOW BECAUSE I BELIEVE THE DECISION-MAKING PROCESS SHOULD MOVE FORWARD ON A SOUND FOOTING AND WITH BROAD-BASED SUPPORT, ESPECIALLY IN CONTROVERSIAL AREAS SUCH AS CANCER POLICY.

THERE HAVE ALWAYS BEEN TENSIONS AND STRUGGLES SURROUNDING PESTICIDE REGULATION. IT SEEMS THAT ALMOST NO ONE IS EVER SATISFIED WITH THE PERFORMANCE OF THE PESTICIDE PROGRAM. THE PROGRAM IS CONSTANTLY FACED WITH THE NEED TO MAKE DIFFICULT SCIENTIFIC DETERMINATIONS. LIKEWISE, THE AGENCY HAS ASSUMED A GREAT DEAL OF RESPONSIBILITY IN INTRA-INDUSTRY ECONOMIC AFFAIRS. DATA COMPENSATION HEADACHES HAVE VERY SUBSTANTIALLY COMPLICATED EPA'S JOB, AND HAVE DIVERTED RESOURCES AWAY FROM THE AGENCY'S BASIC PUBLIC HEALTH AND ENVIRONMENTAL MISSIONS. IT IS IMPORTANT THAT WE ALL RECOGNIZE HOW DIFFICULT THE EPA'S JOB HAS BECOME, AND THAT THERE ARE IN FACT REASONS UNDERLYING ADMINISTRATIVE PROBLEMS IN THE PROGRAM. UNTIL WE SQUARELY FACE THE REAL SOURCES OF THE AGENCY'S RECURRENT PROBLEMS, LITTLE PROGRESS CAN BE EXPECTED.

THERE ARE INDEED MANY TOUGH PROBLEMS AHEAD IN THE AREA OF PESTICIDE REGULATION. I HOPE WE WILL COLLECTIVELY DECIDE TO GET ON WITH THE JOB OF SOLVING THEM BEFORE THEY BECOME ANY MORE INTRACTABLE. THE PUBLIC'S INTEREST DEMANDS WE TRY, AND I AM WILLING TO DO MY PART. BUT IN ALL CANDOR, YOU AND OTHER CONCERNED PARTIES NEED TO MORE REALISTICALLY APPRAISE THE ROLE AND CAPABILITIES OF CONGRESS IN THIS REGARD.

THE SUBCOMMITTEE AND I CAN PLAY THE ROLE OF A REFEREE, AND OCCASIONALLY JUDGE, AS THE KEY ACTORS TRY TO REACH MUTUALLY ACCEPTABLE SOLUTIONS TO COMMON PROBLEMS. BUT I CANNOT BE VERY EFFECTIVE UNTIL THE VARIOUS ACTORS GET RELATIVELY CLOSE TOGETHER, AT LEAST IN CLEARLY ARTICULATING THE AGENDA, AREAS OF AGREEMENT, AND POINTS OF CONTENTION.

THE SUBCOMMITTEE WILL GLADLY TRY TO HELP MEDIATE REASONABLE ADMINISTRATIVE AND LEGISLATIVE COMPROMISES THAT BENEFIT ALL--THE INDUSTRY, FARMERS, THE AGENCY, ENVIRONMENTALISTS, AND THE PUBLIC. BUT DON'T EXPECT MIRACLES. IF YOU DON'T LIKE THE SOLUTIONS PROPOSED IN H.R. 3818, FOR EXAMPLE, IT WOULD BE HELPFUL TO KNOW WHY IN SOME DETAIL. IN ADDITION, THE SUBCOMMITTEE, AND OTHER ACTORS, ARE ANXIOUS TO KNOW WHAT SOLUTIONS THE INDUSTRY WOULD SUPPORT. I KNOW SOME INDUSTRY OFFICIALS BELIEVE THAT TIME ALONE WILL CURE ALL WOUNDS IN THE PESTICIDE PROGRAM. I PERSONALLY DOUBT THAT THIS ANALYSIS WILL PROVE TO BE CORRECT.

I THINK EVERYONE WOULD AGREE THAT STABILIZING, AND IMPROVING, THE TOXICOLOGICAL CAPABILITIES IN THE OFFICE OF PESTICIDE PROGRAMS ARE AMONG THE MOST PRESSING CHALLENGES FACING THE AGENCY. I AM AWARE AND PLEASED THAT ASSISTANT ADMINISTRATOR DESIGNATE DR. JOHN MOORE WILL BE DEVOTING CONSIDERABLE TIME TO THIS TASK. FORTUNATELY, HE BRINGS TO THE JOB BOTH ADMINISTRATIVE SKILLS AND WIDELY RECOGNIZED SCIENTIFIC EXPERTISE. THE PESTICIDE PROGRAM ALSO WILL BENEFIT TREMENDOUSLY FROM THE 45 OR 50 NEW POSITIONS NOW COMING AVAILABLE IN THE CURRENT FISCAL YEAR. I HOPE DR. MOORE WILL BE ABLE TO HELP LOCATE A WELL BALANCED GROUP OF HIGHLY QUALIFIED CANDIDATES FOR THESE NEW AGENCY POSITIONS.

LET ME CONCLUDE BY SAYING I FORESEE A VOLATILE AND EXCITING PERIOD AHEAD IN THE AREA OF PESTICIDE REGULATION. I HONESTLY BELIEVE THERE ARE AMPLE PUBLIC AND PRIVATE RESOURCES AVAILABLE TO RESPOND WISELY, SWIFTLY, AND DECISIVELY TO THESE AND OTHER PROBLEMS AS THEY ARISE. ACHIEVING THIS ADMITTEDLY ROSY OUTCOME, THOUGH, WILL PROVE ELUSIVE IF THE CONCERNED PARTIES CONTINUE TO FIGHT ONE ANOTHER AT EVERY TURN IN THE PRESS, COURTS, BEFORE THE AGENCY, AND IN THE CONGRESS. THE CHOICE OF HOW TO PROCEED WILL NOT BE DICTATED OR CONTROLLED BY ANY PARTY, ALTHOUGH RAPID PROGRESS WILL DEPEND ON EVERYONE'S COOPERATION. IN OTHER WORDS, WE ALL MUST PLAY A POSITIVE ROLE IF SOLUTIONS ARE TO BE READILY FOUND. THIS FACT OF POLITICAL LIFE, OF COURSE, IS A BASIC REASON WHY OUR DEMOCRATIC SYSTEM OF GOVERNMENT OCCASIONALLY WORKS SO WELL.

Mr. BROWN. I am, of course, very pleased to yield to our distinguished ranking member, Mr. Roberts of Kansas, and, as soon as he collects his thoughts, to have any opening statement that he might care to make.

Mr. ROBERTS. I thank the chairman, and I will try to make it brief.

I apologize for the lateness of my arrival. We have had a Republican conference, Mr. Chairman, and as small as our numbers are, it is vitally important, of course, that we meet from time to time.

Mr. BROWN. We understand. [Laughter.]

Mr. ROBERTS. I know you understand. I am not too sure—well, I will just leave that as it is.

**OPENING STATEMENT OF HON. PAT ROBERTS, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS**

Mr. ROBERTS. Mr. Chairman, it gives me great pleasure to welcome Administrator Ruckelshaus to our subcommittee. It has been some time, Mr. Administrator, since we have had someone with the EPA visit with us, and I want you to know that your appearance is of utmost importance to this subcommittee and to the pesticide program.

This subcommittee for several years has been receiving suggestions from a wide number of interested parties as to the need for major amendments to FIFRA. As you know, last year the House passed H.R. 5203, containing major amendments, which was not considered by the Senate.

Earlier this year, the House passed H.R. 2785 to reauthorize FIFRA for 1 year, and to date the Senate has not considered this legislation.

Now we have before the subcommittee H.R. 3818, cited as the Federal Insecticide, Fungicide, and Rodenticide Reform Act, and H.R. 3254, cited as the Pesticide Import and Export Act of 1983.

Your advice and guidance as to how best the subcommittee can address the many problems that have surfaced with regard to the pesticide program will be most welcome.

What this subcommittee needs is your assessment of what is necessary to restore the public's confidence in the pesticide program. There has been testimony that the current law does provide all the legal authority necessary to get the job done and that all that is needed is for the Agency to more or less get its act together.

Others have testified that there is no will at the Agency to correct any perceived problems. Consequently, they are urging that this subcommittee undertake a major rewrite of FIFRA.

The course that this subcommittee takes will depend on your recommendations. Certainly there must be steps that can be taken from an administrative standpoint. If additional funds or manpower are needed, then we should be so advised so that we can assist in your efforts, and there will be a bipartisan effort in that regard. If there are amendments to the act that are needed to better assist the Agency in more effectively implementing FIFRA, then we want to hear about them.

Further, any observations you may have as to the proposed bills under consideration or any of the proposed amendments which

have been or will be suggested as we proceed in our deliberations will be most helpful.

Several previous witnesses have suggested that it is premature for this subcommittee to take up this pending legislation in that the Supreme Court has under consideration the *Monsanto* case and because you, Mr. Administrator, have not had the opportunity to get your own staff in place, nor time to fully review the steps that you may wish to take.

For the benefit of this subcommittee, your recommendations as to a timetable for further review and action not only by the Agency but by the Congress would prove very, very beneficial.

It is my position that we need to give some time to the processes, but this in no way should be viewed as any reluctance on my part to take those actions that are needed to get this program under control.

If there is a need for revisions to FIFRA, then I am willing to work with all parties to come up with compromise legislation that can be passed and signed into law.

Mr. Administrator, based on what has previously been stated, your job is a most difficult one, but I do have confidence in your abilities and judgment, and as a member of this subcommittee, I want to assure you I will do all that I can to assist you.

After all, since its inception in 1972 and major revisions in 1975 and 1978, it is obvious that we still have not fine-tuned this legislation to the point where it satisfies all parties. It may well be that we are facing an impossible task, but I think your observations are eagerly sought because of your previous service at the Agency.

I thank you, Mr. Chairman.

Mr. BROWN. Thank you, Mr. Roberts.

The Chair will recognize any member for 1 minute who may have a burning desire to make a statement.

[No response.]

Mr. BROWN. If not, then it is my pleasure to welcome Mr. Ruckelshaus again and to invite you to proceed with your statement in any way that you may wish, Mr. Ruckelshaus.

STATEMENT OF WILLIAM D. RUCKELSHAUS, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. RUCKELSHAUS. Mr. Chairman and members of the subcommittee, I will read this statement. I think it probably is best, this being my first appearance, for me to lay out for the subcommittee my current thoughts about the pesticide program and where I think we are on some of the issues that are of particular concern to the subcommittee.

Certainly, the issue of pesticides and the pesticide program is not a new topic for me. You were kind enough, Mr. Chairman, to attach my testimony of more than 10 years ago now on this same subject.

Those issues were complex and controversial then. In that respect, not much has changed. Issues on the cutting edge of science and social policy are involved, and the stakes are high: public health protection, integrity of ecosystems, agricultural production,

industry innovation and competition, sanitation and general quality of life.

I am glad to have the opportunity to discuss some of these issues with the subcommittee, to pledge my support for the pesticides program, and to start building the framework in which we can work together to face problems and make progress.

I intend to take a careful look at the scope of pesticide regulation issues and to work closely with your committee in seeking reasonable solutions to the difficult areas.

We are establishing a management team in EPA which I am confident will go a long way toward an efficient and effective toxic chemicals control program. The President will soon nominate Dr. John Moore, Deputy Director of the National Toxicology Program, to be the Assistant Administrator for Pesticides and Toxic Substances.

Dr. Moore is somebody that I searched for long and hard, Mr. Chairman. I think he is particularly well qualified to do this job. He is a Board-certified toxicologist as well as a seasoned administrator, having been in Federal service for many years running multimillion dollar toxicology testing programs. He knows the science and he knows the process.

I think the combination of top management attention to pesticides, the expertise of our new team, and our willingness to work with the Congress will produce the climate for problem solving and obtaining the results we all desire.

I have several personal observations and administrative commitments to make on the general and specific themes of the legislation under consideration, as well as some of my own thoughts and philosophies in administering this law.

There are problems and controversies in pesticide regulation, but I do believe there are administrative solutions for many of them.

I also believe that the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA], is basically a sound and workable statute which gives me authority to act on several fronts without waiting for changes in legislation.

It might be useful to explore with you some of the basic principles which guide me as Administrator in carrying out my responsibilities under FIFRA.

Let me first reaffirm my belief that public health protection is the cornerstone of FIFRA. Human health concerns are paramount. In making decisions about pesticides—a process which always involved uncertainties and subjective judgment—my approach has always been to weigh very heavily the human health concerns that the American people hold so dear.

It is also my view that because pesticides, by their nature, have the potential to cause significant harm to nontarget as well as target organisms if not used properly, they need to be vigorously regulated.

Pesticide regulation is a significant public trust. The registration and cancellation decisions we make can have tremendous public health implications, as well as significant economic impact, and are therefore an important responsibility to those who administer the law.

At the same time, I cannot stress strongly enough my belief that risks must be balanced against benefits, and that statutes such as FIFRA, whose heart is risk/benefit balancing, are fundamentally the most sound.

We do not live in a risk-free society. There is a price to pay for risk reduction as well as a price to pay for risk acceptance. We cannot make sound social policy decisions without considering both aspects.

This balancing must go hand in hand with flexibility. The Administrator of EPA needs a spectrum of both legislative powers and administrative tools to do the best job possible for the American public. Each pesticide decision is unique. These are not just chemical-by-chemical decisions; we often must consider the particular risks and benefits of each individual use of a pesticide. Many times we are grappling with scientific uncertainties, and we must consider a variety of serious impacts on both the risk and benefit sides.

FIFRA gives the EPA Administrator the general guidance and criteria to make the specific case-by-case decisions. It is my view that it is simply not good public policy for Congress to go beyond establishing the criteria for judgment on issues involving so many complex and diverse circumstances. If the Administrator does not implement the will of Congress by properly balancing the relevant factors, Congress exercising its oversight powers should make its concerns very clear.

I also want to emphasize the necessity of public access to the decisionmaking process. One of my first directives as Administrator this year was to insist that the Agency operate in an open fashion. EPA can function effectively only in full view of the public.

This does not imply that our pesticide staff should be hamstrung in its ability to obtain information in a useful way and on a timely basis. Agency personnel must talk to the regulated industry, pesticide users, and other interested parties. We should not reduce communications; we should expand them. We should look at what we can do to improve public access to, and involvement in, decision-making.

Of course, the injunction in the *Monsanto* case, for the time being, prevents us from releasing health and safety data to public interest groups. But we can still do our best to listen to everyone, to discuss issues with everyone, so that we have the fullest possible input.

Along these lines, while I have not had an opportunity as yet to meet personally with various interested parties to discuss the issues raised in the legislation before this subcommittee, I intend to do so in the near future.

Finally, I am a firm believer that risk assessment and risk management are two separate and distinct activities. Simply put, risk assessment is the scientific examination of the problem, and risk management is what we do about it. I am encouraged that this subcommittee has expressed similar views and that we share a common respect for the recent National Academy of Sciences report on this important topic.

I think it is very important to have a uniform approach to risk assessment and risk management in EPA. As evidence of this, I have set up several Agency-wide task forces to analyze a number of

regulatory actions across Agency lines to determine how risks have been handled by the various programs, including the Office of Pesticide Programs.

If it proves feasible, this task force effort will yield new guidelines to assist all our programs in assessing a variety of health issues.

Obviously, risk assessment and management issues are far-reaching and involve the entire Federal Government, not just EPA. I have already initiated meetings with my peers in other Federal agencies to facilitate interagency discussions on this topic. I intend to continue a straightforward dialog with the Congress on all health risk issues, including cancer policy.

Of course, the key to good risk assessment is to have good data on which to base sound decisions, which leads me to the first specific program issue I would like to touch on today, that of data quality. We all have a strong stake in insuring the quality of science in the Agency, as well as the quality of data on which Agency decisions must be based.

This subcommittee is to be commended for its focus on data quality issues. We have both seen the critical need to maintain the integrity of the process by which data are developed and the integrity of the process by which the data are reviewed and incorporated into regulatory decisions.

It is EPA's job to make sure that data are developed in accordance with sound scientific principles and quality laboratory practices. While we do not have explicit authority to inspect laboratories or to cancel pesticides whose critical data base has been found to be flawed, there are a number of activities I am committed to pursuing administratively.

I have just signed Good Laboratory Practice regulations governing data developed to support registrations under FIFRA. These regulations will require registrants to certify that all data submitted to the Agency have been developed in accordance with these good laboratory practices and will enable us to take action against registrations if that certification should prove incorrect.

The Agency has made a renewed commitment to the laboratory audit program. By combining the resources of our Offices of Pesticide Programs, Toxic Substances, and Compliance Monitoring, we expect to display a real presence in the laboratory testing community, and increase the number of site audits and individual study audits.

Increased consultation has already begun among EPA, the Food and Drug Administration, and the National Toxicology Program, which will permit better coordination of effort and better scheduling, thus avoiding duplication and permitting an increased number of laboratory inspections.

In addition, Dr. Moore will be personally involved in data quality and data review issues in the Office of Pesticide and Toxic Substances, and bring his own personal experience and expertise to bear on these important matters.

Quality of data is one issue. Equally important is the quality of review of that data once it reaches the Agency. In this regard, I know there has been a great deal of concern in this subcommittee about the so-called cut and paste issue.

Cut and paste refers to copying without citation from reports of chronic toxicity tests submitted by registrants in support of pesticide registrations. I am dismayed that this practice ever occurred in EPA.

The important question is whether the reviewer did a critical review and simply did not rewrite the results in his or her own words, or whether it indicates the more serious possibility that a very superficial review had been conducted.

We have an independent contractor, Battelle, sorting out that question in two phases. Phase I compared a sample of registrant test submissions with EPA reviews to determine the magnitude of the cut and paste activity.

Phase II, scheduled for completion at the end of the month, is intended to provide a preliminary determination of the technical significance of the cut and paste activity.

The Agency's progress to date on this matter was reported to you, Mr. Chairman, in our letter of September 30, 1983. As we said in that letter, we are taking several steps while the matter is being reviewed to insure that the public health will be fully protected. Our efforts outlined in the letter continue on schedule.

While I do not presume to prejudge the final result, current indications are that the issue is primarily cut and paste report writing—that is, unattributed copying of text to save time—rather than the failure of scientists to perform a critical review of data. I assure you that all errors discovered will be dealt with expeditiously. This subcommittee will be kept apprised of our findings.

Another particular interest of mine is enforcement at EPA. As you know, responsibility for the enforcement of FIFRA belongs jointly to the States and EPA. To date, there are 55 States and territories and 8 Indian tribes involved in cooperative agreements with EPA. Overall, I believe the pesticide enforcement program has been effective.

For example, for each of the last 3 years, the States have conducted approximately 50,000 compliance inspections under cooperative programs. Before these cooperative programs began, EPA conducted, on an average, 8,000 inspections per year. The partnership which we have with the States is in our view a success, and it is a program to which I am strongly committed.

There are several areas of FIFRA that involve primarily Federal enforcement activities which could be strengthened. Explicit authority to conduct a data audit/laboratory inspection program may be desirable. Perhaps there is also merit in examining whether the legislation could be strengthened by designating additional unlawful acts under section 12, providing broader inspection authority, and modifying the penalty provisions under section 14.

The Agency will be taking administrative steps to insure that the pesticide enforcement program is being carried out by the States and EPA in the most effective way possible. One of our priorities is to involve all States in cooperative enforcement programs and certification and training programs, and to strengthen use and misuse enforcement.

We also plan to continue to provide a high level of technical and legal support, training, and guidance to our State partners.

Another issue I know this subcommittee is concerned about is the administration of the emergency exemption and special local needs programs. As you know, we conducted our own audit of the programs earlier this year. By and large, we think the States are doing a good job.

However, we did find some abuses in the emergency exemption area, particularly in the case of brand new chemicals which are gaining an early market advantage without a full data package under the registration provisions of the act. These abuses must stop.

I pledge to you that we will be taking a fresh look at our regulations governing emergency exemptions; we will hold public meetings to get the widest possible input on those regulations; and we will propose changes through the rulemaking process.

In the meantime, I have directed the Office of Pesticide Programs to proceed with requests for emergency exemptions involving new chemicals very cautiously, and to change its procedures significantly. I am requiring the program to solicit public comment on such emergency exemption requests.

In addition, should the office decide to issue such an exemption, they will write a special justification explaining the need for that action, which will be published in the Federal Register.

Mr. BROWN. Mr. Ruckelshaus, could we interrupt you at this point to go answer that rollcall? We will resume in about 10, 15 minutes, and you may finish your statement at that point.

Mr. RUCKELSHAUS. Fine.

Mr. BROWN. The subcommittee will be in recess.

[Recess taken.]

Mr. BROWN. The subcommittee will come to order.

We apologize for the interruption, Mr. Ruckelshaus, and you may continue with your statement.

Mr. RUCKELSHAUS. Thank you, Mr. Chairman.

The final topic I would like to discuss today is ground water protection.

We have created a special task force working exclusively on developing an across-the-board ground water policy for all of our programs, including our policy for handling pesticide contamination.

We may have to face the fact that there could be some types of pesticide products which simply cannot be used in certain areas of the country.

I do believe that we have sufficient legislative mandate and authority in FIFRA to deal with the ground water issue. We have restricted products which have a potential to leach to ground water, and we have suspended product registrations—recently, the pesticides DBCP and EDB come immediately to mind—because of the toxicity of the chemicals coupled with their appearance in ground water.

There are a number of actions under way to address pesticides in ground water which I mention to indicate our level of concern.

Under FIFRA, EPA is imposing upon pesticide applicants the requirement to develop data to predict movement of products through the soil. New regulations were proposed last fall and will be published as final in early 1984.

We have prepared and published through the National Technical Information Service detailed protocols and guidance on how to conduct studies to carry out these data requirements.

EPA and the private sector are developing and testing models to better predict the potential for ground water contamination.

The Agency is increasing the amount of field monitoring required where a potential for ground water contamination exists.

Individual States with the particular soil and hydrogeologic structures most conducive to ground water problems are imposing restrictions in a very responsible way for particular areas.

The Agency is providing States with advice on the toxicological significance of pesticides discovered in drinking water supplies through using maximum advisable contamination levels.

Before closing, I would add that I am committed to protecting farmworkers and other groups who are especially at risk from pesticide use. I am equally committed to participating in global efforts to understand and control pesticide use around the world and to accomplish this through a vigorous system for international notification.

I believe that a system of compatible measures will be more effective in the control of hazards associated with pesticides in international commerce than a single stringent system operated by the United States.

I support the efforts of several international organizations to develop appropriate multinational agreements for international trading practices, harmonization of registration requirements and data protection schemes, and comprehensive export policies.

Further, I believe the United States can play a role in helping these other countries develop their own regulatory infrastructures and criteria for assessing risk, thereby developing their capabilities to evaluate all pesticides and the means to use them wisely.

This concludes my prepared statement, Mr. Chairman.

I pledge to you that the Agency will continue to work with this subcommittee on whatever path you decide to pursue, and I would be glad to try to answer any questions you might have.

Mr. BROWN. Thank you very much, Mr. Ruckelshaus, for your statement.

I will turn to Mr. Roberts for the first questions.

Mr. ROBERTS. Thank you, Mr. Chairman.

First of all, Bill, let me say I commend you for an excellent statement, more especially in regard to your reaffirmation when you state on page 3 that it is your belief that public health protection is the cornerstone of FIFRA.

You go on to say that pesticide regulation is a significant public trust. Then, finally, on page 4, you do get into the business which of course is of interest to my farmers and ranchers about the risk/benefit problem and the need for flexibility.

Now, I know that that pretty well covers all the bases, but I think it is a needed reaffirmation, and I commend you for it.

On page 5, you have addressed the *Monsanto* situation or the case before the Supreme Court, and I am wondering, considering that the MONSANTO case still must be decided, do you have any recommendations as to how this subcommittee might proceed to address that problem?

I know you are going to cooperate with us in this regard, but I wondered if you could be more specific.

Mr. RUCKELSHAUS. We have suggested in the past and through other witnesses, and I think it probably is the wisest course, that we wait for the Supreme Court to rule on our appeal on the *Montano* case to determine what the law is, so that if the committee wants to change the existing law, it will have the guidance of the Supreme Court in doing so.

The right to property, which the Supreme Court is dealing with here, is certainly a very important one, and it may well be very helpful to this subcommittee in deciding how it might be possible for the Government to share the information submitted to it by private companies to do so and at the same time protect their proprietary interests. The guidance from the Court might well be helpful.

Mr. ROBERTS. In the interim, you have indicated that you have not yet had an opportunity to meet personally with the various interested parties that you follow up in that same paragraph, and it is your intention to be doing that prior to the decision.

Mr. RUCKELSHAUS. Yes, it is.

Mr. ROBERTS. On page 8, you are talking about, at the top of the page there—I am on page 7—“These regulations will require registrants to certify that all data submitted to the Agency had been developed in accordance with these good lab practices and enable us to take action”—What kind of action?—“against the registrations if that certification should prove incorrect.” I am wondering what kind of action we are considering there.

Mr. RUCKELSHAUS. Whatever action we are authorized to take. I think that in fact we can open up the registration again. There are administrative remedies available to us where the data as certified to by the registrant proves not to be consistent with that certification.

I cannot list exactly what actions can be taken, but certainly we can open up that registration issue again if they fail to do that. I don't know whether we have specific legal authority to act other than opening up the registration again.

Mr. ROBERTS. On page 9 and 10 of your testimony, you discuss the cut and paste issue, and I am certainly encouraged that you feel the problem is one of report writing rather than the failure of any kind of critical review by the scientists involved.

Is it too early for you to tell us the number of chemicals that have been cleared? We keep getting rumors as to the number of chemicals and reports—and, by the way, I want to commend your office for coming to us with the details of this particular issue as they have developed. But is it too early for you to tell us the number of chemicals that have been cleared?

Mr. RUCKELSHAUS. What Battelle did is take a sample of some 500 of these registrations, look through them and try to compare the submissions with the review itself and try to determine how much of this cut and paste went on.

They compared the two documents—the submission and the review. Where it looked like it was the same, they put it aside and determined that, at least on an initial basis, it may well have been included under the cut and paste review.

As they have gone through it further, they have winnowed down that number considerably from what they had at the beginning. We came up, in fact just last week, with a new number out of that group that they have already reviewed, which was considerably below the first number that they submitted.

What I think might be most helpful to the subcommittee is to, as these numbers come out, simply supply them to you without any indication that it is final now. I don't think we have finally determined how much of this actually has occurred, but as I suggested in my statement, it does appear at this point that the amount, where we really did have some substitution for the review itself, a rather small number.

Mr. ROBERTS. I appreciate that.

Upon completion of phase II of the report, what is the next step you expect to take?

Mr. RUCKELSHAUS. What is the next—

Mr. ROBERTS. Step that you intend to take?

Mr. RUCKELSHAUS. We have taken some preliminary personnel actions involved. Again, under the rules of the Personnel Act, I am a little reluctant to get into that too deeply. But we have taken some of the people who were involved in this and taken them out of this kind of activity.

Mr. ROBERTS. Pardon me for interrupting. Have they been reassigned to other duties?

Mr. RUCKELSHAUS. Yes; they have.

Mr. ROBERTS. All right.

Mr. RUCKELSHAUS. Now, it is on a preliminary basis because we want to determine exactly what steps—

Mr. ROBERTS. Has any further action been taken, other than that?

Mr. RUCKELSHAUS. No; that is what we have done so far.

Mr. ROBERTS. I see.

Mr. RUCKELSHAUS. Now, obviously, where we have some questionable registrations involved, we will have to take steps to go back and re-review those. We may request additional data. There are a number of things we can do to insure that the registrations ultimately are proper. In fact, we are doing that on an ongoing basis as we uncover some of these irregularities.

Mr. ROBERTS. In the interest of time, Mr. Chairman, I have several other questions that I may submit in writing.

There is only one other question that I have. You state right off on page 2, "We are establishing a management team in EPA which I am confident will go a long way toward an efficient and effective toxic chemicals control program," and then you go into the nomination of Dr. Moore.

Do we have a timetable as to when we can expect that they are onboard and whether you can come to the subcommittee and tell us whether you need even additional personnel, et cetera? What are we talking here about, 90 days or so?

Mr. RUCKELSHAUS. I had hoped by this hearing that Mr. Moore would be onboard. We have some 13 Presidential appointees, all of whom are new since I came here in May. We have all but three of those now cleared and either confirmed or up for confirmation. There are two more this week. We expect them to come out mo-

mentarily. We expect the remaining three, among whom is Dr. Moore, to come out at any moment. I certainly know of no problem. It is just a very time-consuming process to get through all of this document search and FBI investigation and the rest.

Mr. ROBERTS. I know it is very frustrating to you, and it is also very frustrating to the parties involved with this whole subject area. We are very eager for you to be onboard with a full team. I would hope that we could see the management team onboard at the soonest possible date, and I know you hope that as well.

Do you have anything to say to our farmers and ranchers out there that are going through such a tough time, in regard to pesticide policy?

Mr. RUCKELSHAUS. The only thing I can say is that, as I suggested in my statement, it is my desire to be as balanced and fair as I know how to be in the administration of this law. Those are certainly the instructions that the pesticide office has. I have a lot of confidence in that office. These decisions are, by their very nature, extraordinarily controversial; they arouse deep emotions in people.

I think the only thing this Agency can do is call them as we see them and try to be as balanced and fair as we know how to be and base what we are doing on analysis, good science, a balancing of the risks and the benefits involved, and out of that should come a sound program that is not only in the interests of the farmers and ranchers in your part of the country but of the public as a whole.

Mr. ROBERTS. I appreciate that.

Thank you, Mr. Chairman.

Mr. BROWN. Thank you, Mr. Roberts.

I am going to recognize the chairman of the full committee at this time for any questions that he may have.

The CHAIRMAN. Thank you, Mr. Chairman.

I have just one question.

First, I want to commend you for your proposed regulation on laboratory practice. On the face of it, they appear to be constructive and good. I hope that when implemented they will have firm and constant oversight.

My concern, though—and my lawyers are not clear on this—is: It appears these proposals must sit 60 continuous legislative days before our committees. I am wondering if we might not expedite this.

I wonder if you have any thoughts as to what exactly this means. When could you implement them?

Mr. RUCKELSHAUS. I did not hear the first part of your question.

The CHAIRMAN. On your laboratory practice regulations.

Mr. RUCKELSHAUS. I have not gotten an exact date.

The CHAIRMAN. You have no date, but you need to submit them to the respective committees for 60 days.

Mr. RUCKELSHAUS. Those were signed on Monday, and I am sure they have been submitted to the committee immediately.

The CHAIRMAN. Yes; but you cite "60 continuous days". We may not be here 60 continuous days, and that could throw us into January probably.

Mr. RUCKELSHAUS. I don't know the answer to that question. It is certainly my desire to implement them as quickly as possible, just as you suggest.

The CHAIRMAN. If it lays over, then you have to resubmit for the next session. I wonder what your interpretation of this is. We shall take a look to expediting them if possible.

Mr. RUCKELSHAUS. Our representative from the general counsel's office is here, Mr. Chairman, and I will make sure that he works with the committee counsel to determine exactly what the interpretation of the law is and how fast we can get them implemented.

The CHAIRMAN. We would appreciate that.

Thank you, Mr. Chairman.

Mr. BROWN. Thank you, Mr. de la Garza.

I am going to recognize the members now in order and ask them if they will try to abide by the 5-minute rule on the first go-around, and then we may have time for a second go-around.

Mr. Staggers.

Mr. STAGGERS. Thank you, Mr. Chairman.

Mr. Ruckelshaus, I have heard much about you, and I wasn't disappointed with your testimony. I compliment you on your statements.

One thing that I would like to go right to the point on, and I think that the chairman mentioned this also, and that is that there is a lot of talk that you will need more time to implement your policies. Can you give us a ballpark figure of how much time you do need to implement some of the things and address some of the concerns that this subcommittee has.

Mr. RUCKELSHAUS. Some of the steps we have already taken. Some of the administrative actions that I have suggested in my statement have already been taken. The good laboratory practices regulations are an example. There are others which are still under review.

But it is my desire and, I know, the desire of the pesticide office and Dr. Moore's desire to get these administrative changes in place as quickly as we possibly can, making sure that we have had an opportunity for public input to review what it is we plan to do, and I don't see why that can't be, why most of these things can't be accomplished—the administrative changes—shortly after the first of the year.

Mr. STAGGERS. So when we get back in January, we can expect that this will be in place, most of the concerns?

Mr. RUCKELSHAUS. It will either be in place or it will be imminent that they will be put in place.

Mr. STAGGERS. There are three things I would like to touch on and I would like to see what your reaction would be.

The bill before us today would give more public input. Anyone could request a hearing if adversely affected by a ruling. Do you favor that or oppose it?

Mr. RUCKELSHAUS. I favor equal access to the decisionmaker, and I understand that the bill that has been suggested, at least one of the bills that is before the subcommittee, does try to address that problem of equal access.

I think that as a principle, equal access is a terribly important one to me, and I do recognize that there are people in the society who feel very, very impotent on the basis of some of the laws, and this may be one of them, where they do not have equal access with

other interested parties, whether it is a registrant or whoever it might be.

Whether or not that is the best way to do it, the best way to accomplish that principle, I don't know. There have been some questions raised about whether that approach won't cause significant delays in the program itself and significant resource demands on the agency.

I am certainly willing to work with this subcommittee, work with anybody, for establishing that principle of equal access, because I think it is a terribly important one.

Mr. STAGGERS. EPA used to monitor pesticides. Would you favor reinstating that type of provision?

Mr. RUCKELSHAUS. As I suggested in my statement, we are attempting to increase our monitoring activities. I do believe that monitoring is a very important problem that we have to address not only in this area but across most of our environmental programs, and that the monitoring programs in EPA have been reduced over the last several years.

As we get into these longer range kinds of problems which the country is trying to deal with, ground water being just one of them, where it may take years for contamination to occur and then to show up in an area where it can affect public health, the necessity of our having a comprehensive monitoring program is very important and, in my view, a very wise investment for the society,

Mr. STAGGERS. What would you feel about time limits being placed on studies that EPA has to do with respect to some of the safety standards, if in fact we put actual time limits? Would that tie your hands too much?

Mr. RUCKELSHAUS. I understand the frustration that leads the Congress to try to impose time limits, and it is not just the Congress; it is others who wonder why the Agency doesn't act.

Some of that delay is associated with mismanagement, with a lot of problems that agencies of this size normally have. Some of it is associated with the lack of sufficient information to know what to do.

A time limit established by law does not distinguish between those delays that are a result of management practices that ought to be changed, that ought to be straightened out, and those delays that are a result of data gaps, of information lacks, that simply do not permit the Agency to act wisely, to decide what to do.

My problem with legislatively established time limits in response to understandable frustration is that we sometimes are forced to act before we know what we ought to do, and a lot of harm often results from that kind of activity.

We have these deadlines on us across all of these environmental statutes, and it has been my experience both in and out of the Government, looking at them, that while it is understandable why they are there, there often is a lot of harm that results from those time limits.

Mr. STAGGERS. Well, you can study a problem forever. Can we count on you to get those studies done, though?

Mr. RUCKELSHAUS. As fast as it is possible to do it. If we could sweep aside the management kinds of roadblocks that occur, the bottlenecks that occur, and just make sure that any delay is a

result of a data gap or a lack of information that we think we can get in a relatively timely fashion that will enable us to act, then you can count on my addressing that.

Mr. STAGGERS. Thank you.

Thank you, Mr. Chairman.

Mr. BROWN. Mr. Evans.

Mr. EVANS of Iowa. Thank you, Mr. Chairman.

Mr. Ruckelshaus, I, too, want to compliment you on an excellent statement. It is one that is most reassuring.

There is an area or two which I would like to explore.

As you know, the principal reason for initiating these hearings today is that we have two specific bills before the subcommittee, H.R. 3818 and H.R. 3254. Does the administration have a position on these specific bills at this time?

Mr. RUCKELSHAUS. We do not as yet have an official administration position on these bills.

Mr. EVANS of Iowa. Is it the intention of the Agency and the administration to come back to the committee with a rather detailed analysis of these bills? There have been some indications that perhaps the administration is going to propose a bill of its own.

What direction do you prefer to go?

Mr. RUCKELSHAUS. Mr. Evans, we will certainly be glad to work with the committee to make comments on any of the provisions of bills that are pending before the committee.

It has been the administration position up to this point that the reauthorization of FIFRA was important; that we ought to make sure that, for purposes of constancy in the program, we have a law that Congress has put its imprimatur on and that reauthorization would be helpful in getting the new people in place and getting them familiar with these laws and reviewing them.

It will take some time to develop an administration position on whether or not we need new legislation. If the committee decided it wanted to enact new legislation, it wanted to respond to these bills, we might have some specific recommendations as to what might happen. I mentioned just a few of them in my testimony, and I mentioned some general principles which I think should apply.

Mr. EVANS of Iowa. Thank you very much, and that does answer my question adequately.

Just one final comment. I was very pleased that, beginning on page 12 of your testimony, you gave considerable emphasis to ground water protection and the steps that you are taking.

I am very much interested in that and very much concerned about it. I was particularly struck by the one sentence that you have in there: "We may have to face the fact that there could be some types of pesticide products which simply can't be used in certain areas of the country."

I think that is a most significant statement and one that has many, many implications for this Agriculture Committee. It is something that I think, in the future, we need to explore in more detail. I thank you very much.

Mr. BROWN. Thank you, Mr. Evans.

Mr. Panetta.

Mr. PANETTA. Thank you, Mr. Chairman, and thank you, Mr. Ruckelshaus, for the statement that you provided. It was very in-

depth, and I think it touched on many of the concerns that the subcommittee has had over a period of time.

Let me ask, what is your preference? Do you want us to mark up a bill now? Would you prefer that we wait? I think we really need guidance on that in terms of having two bills that are before us that deal with broad changes in the FIFRA law.

You have stated some areas where you think administrative changes could be made. What would be your preference at this point?

Mr. RUCKELSHAUS. My preference would be to wait until we get these administrative changes in place, see what part of the problem that addresses, see if we can get a decision on the *Monsanto* case, which deals with the issue of access, get the new people in place so they can get a feel for the program and manage it and make some recommendations for change if they think they are warranted. That would be my preference.

Mr. PANETTA. One of the problems we have always run into in this area, and it has particularly been true, I think, over the last couple of years, is that with all of the enforcement responsibility that exists at EPA, at the same time, you have been hit pretty hard in terms of reductions in your budgets.

I think the administration, for fiscal year 1984, recommended a 9-percent reduction at EPA. Our concern is that statements of good will may be one thing, but in effect, if you are really going to strongly enforce these laws and do the kinds of things you outlined in your statement, in fact you have to back it up with people who are on the frontlines and doing the job.

I guess I would ask you whether you anticipate having that kind of assistance in terms of the budget support in the administration itself.

Mr. RUCKELSHAUS. We have, with the assistance of this committee, received an additional 40 people in the supplemental or amended 1984 budget which we submitted in June.

We are in the process now of getting those people on board. Most of our enforcement activity goes on in the regional offices and goes on there because of the close relationship with the States that the law provides.

As I have stated not only before this subcommittee but others, it is my fervent hope that we are able to request the resources necessary to carry out the mandates of Congress, and in this enforcement area, which we have increased, by the way, greatly between fiscal year 1984 and fiscal year 1983, across the board in our programs, it is a hard judgment to make how many people you need to carry on an effective enforcement program.

If I am able to instill in the people in the Agency the necessity of using enforcement as a tool to achieve our environmental goals and they are effective at using it—and that is exactly what we are in the process of trying to do; we thought we would put in place a new management system to try to insure that enforcement takes place on a timely fashion—then, really, we may not need that many resources, simply because it is very clear to everybody in and outside the Agency that the will to enforce is there.

Now, in this area, where we have a lot of smaller kinds of activities that take place, we have to work very closely with the States

where a lot of the resources are to insure that they enforce. We have taken steps through training and other programs to insure that the States move forward.

But it does take resources, and I certainly will discuss with this subcommittee the resources we need to achieve enforcement on a regular basis.

Mr. PANETTA. Having served in the executive branch in an enforcement capacity, it has been my view that you need to have the qualified people helping you do the job, and if you do not, whatever the good will may be, you are going to find your resources strained and you are not going to be able to implement the kind of enforcement necessary—I mean, we may be up here passing all kinds of regulations and all kinds of guidelines, and they don't really mean a thing unless you've got people that are willing to be there and do the job.

So, from my point of view, I think a real test of the commitment—and I feel confident of your commitment—I think the real test of whether you can fulfill your commitment will be the support within the administration as it is presented in the budget request.

Thank you, Mr. Chairman.

Mr. BROWN. Mr. Franklin.

Mr. FRANKLIN. No questions.

Mr. BROWN. Mr. Volkmer.

Mr. VOLKMER. Yes, I would like to continue, Mr. Ruckelshaus, with some of the questions that have been given.

To get first to the question of the budget, as the gentleman from California has brought out, there have been newspaper reports—and we all know how those can be accurate or inaccurate—that the OMB and the President have said we are going to cut down on spending in 1985.

Have you received any pressures from OMB or the White House to reduce your request for the 1985 budget?

Mr. RUCKELSHAUS. The report that was in the paper this morning was of a meeting that I attended yesterday of the Cabinet in which the President was very clear that this country has a major problem involving those deficits, and if we look out 2, 3, 4, 5 years and continue to see very large deficits, he made it clear to everybody there that one side of the deficit reduction effort had to come from spending cuts.

EPA was not exempt from that any more than any other agency that was in the room. To the extent that a very clear expression on the part of the President that he was deeply concerned about deficits and deeply concerned about the contribution of those deficits of Government spending across the board, amounts to pressure, then I did receive some pressure yesterday, along with everybody else.

Mr. VOLKMER. Well, you see, these are some of the concerns, as I think you see from the committee, as to whether the pesticide program, FIFRA program, within EPA can be administered properly without sufficient funds.

I look at cut and paste as maybe a problem, but the fact is, it is one way to do it with limited personnel. The monitoring program, the same way, reductions. The problem with the lab in Maryland, a slight reduction, but the problem is there.

So that concerns us a great deal up here on the Hill. We have to establish priorities, and I think this is a good priority. So you can understand my concern.

The other thing I would like to take up with you, too, is that in regard to the gentleman from Iowa on the legislation and no position as yet on the bill, and the gentleman from California asked and you said you would like to have it reviewed after a period of time when people in management, et cetera, are in place, is there any possibility that, in the meantime, say in the next several months, the Agency could go through the legislation and give us how that provision would affect the Agency?

In other words, some of us have not had, really, a lot of time to analyze, with everything else we have going on up here on the Hill these last few days, to fully analyze the two pieces of legislation. But I, for one, would like to know how the Agency feels that it would affect them and impact on the operation, not only in manpower but on the program, et cetera, and what effects it would have, before we move on it.

Mr. RUCKELSHAUS. I think that is a fair enough request. Regardless of whether the Agency would ultimately support any provision, or the administration would support any provision in the bills, I do think we have an obligation to provide the subcommittee and its members with—

Mr. VOLKMER. I would like to have an analysis.

Mr. RUCKELSHAUS [continuing]. Technical assistance and analysis. In fact, we have, since I have returned, been doing that with all the committees of Congress, regardless of our position on the particular provision. In fact, when we sit down and do some joint analysis, we often come to the same conclusion about whether a provision is wise or not.

Mr. VOLKMER. Do you believe that you could do that for us, then?

Mr. RUCKELSHAUS. Yes.

Mr. VOLKMER. Write us on the legislation.

I also notice, in the area of legislation, you do make some recommendations in your statement: On page 10, explicit authority to conduct data audit/laboratory inspection programs, and then specific legislation possibly to strengthen the additional unlawful acts under section 12, et cetera.

I quite agree, especially with the first one, and I, too, wish to commend you, as the chairman of the full committee has, on what you have done on the laboratories and the audit. I think that is necessary.

But again, if you understand my problem, it is in regard to how lack of funds impacts on that. Can you tell me how lack of money impacts on being able to do those things?

Mr. RUCKELSHAUS. On the laboratory audits?

Mr. VOLKMER. Yes.

Mr. RUCKELSHAUS. With some of the 40 people that were provided in the amended request for fiscal year 1984, we have put them into the laboratory audit area. Again, it is a question of establishing priorities in the Pesticide Office and whether or not we can do everything we would like to do with the funds we have available. I am sure we could discuss for some time whether it is enforcement, laboratory audits, whatever it might be, but I think with the new

procedures that we have in place and the requirements we have put down under these general laboratory practices, we will be able to see an increase in the quality of the data that we receive.

Mr. VOLKMER. My time has expired, Mr. Chairman. I have some more questions, but I will wait until the second round.

Mr. BROWN. Mr. Olin.

Mr. OLIN. Mr. Ruckelshaus, I just have a few questions.

I would first like to say that your presence here is very welcome. It is like a breath of spring compared to some of the other meetings that we have had on this subject.

I think that I certainly have high confidence in your ability to tackle this job in a very effective manner, and I think the whole committee is going to be looking forward to a very constructive relationship, not an adversary relationship.

I would like to ask some questions to get a little better understanding of about where you stand with regard to really taking over the Agency and getting it to the point where you are comfortable with it, so I can understand the relationship here a little bit better.

One of the things I am sure you have done is to try to make an appraisal of where you do stand, even though you are restaffing in the process. Could you give us some idea about where you stand personally with regard to your assessment of all the activities of the Agency with regard to what you think they ought to be doing and also with regard to what the law requires?

That is a big question, but could you try to respond to it?

Mr. RUCKELSHAUS. Yes, it is.

I think, as I suggested in the first part of this statement, in terms of my own philosophy of how the Agency ought to proceed, that the requirement of the Agency to balance risks and benefits under FIFRA is the kind of requirement we ought to have across the board.

One of the things that we have undertaken is a review of the general statutory base of the Agency—there are some 10 laws that we administer—obviously concentrating on a few of them where the problems seem to be the most severe, and do the analytical work, lay the intellectual capital stock, so that when an opportunity for change would occur in the Congress, we have got the work done; we can say what the problems are that we are trying to address, how we have been doing it, what the statutory framework is in which we are operating, and then any recommendations for change that we might have.

Basically, I think that the Agency needs to be given the kinds of charges that have been given in general under FIFRA, and then the Congress exercising its oversight responsibility to haul us up here and see whether we are doing the job they have given us.

Mr. OLIN. You made some comments, some very nice comments, about operating in the open and having everything out before the public.

Is your appraisal with regard to FIFRA activities in a State that could be made public to this subcommittee? Is it something that can be written down? I have looked at these 10 or 12 areas; I think that we need improvement here. Is this in a position where we could get some knowledge of your assessment of the situation?

I ask that because we are talking about reauthorization and maybe revising the law, and one of the problems we have had in the past is that the law has required a lot of specific things in monitoring and quality of data and so on, that have not been handled very well by the Agency. We are anxious to sort of figure out whether you see it the same way, whether you can administratively take care of those things, or whether some of those things need to be pinned down even tighter in the law.

Mr. RUCKELSHAUS. The best current assessment I have is what is in my statement right now. I have enormous confidence that Dr. Moore, in taking over, the people who are there now at the top management levels, are going to be able to handle a lot of these problems administratively.

I would not suggest to this subcommittee we do not have any problems with FIFRA, that there is no reason for the subcommittee itself to be concerned about how some of the problems have been administered in the past. I do not believe they are insuperable; I do not think they aren't problems that we can fix with good management practices.

To the extent that we do need legislative change and cannot get at these things administratively, we will come back to the subcommittee and make recommendations.

Mr. OLIN. Would you be comfortable with a relationship with this subcommittee to try to work through these legislative and administrative questions so that we can get into the specifics of that with you or your key people?

Mr. RUCKELSHAUS. Certainly. I think we should do that.

Mr. OLIN. I do not think that we are going to be able to avoid some action on the FIFRA legislation by next spring. Even though you may not be totally ready, it still may turn out to be a good idea to work together in certain areas, so we can at least pin down the things that need attention the most urgently.

Mr. RUCKELSHAUS. I think we should do that. I think it is essential that we do that.

Mr. OLIN. I want to ask one more question, Mr. Chairman.

The relationship that I think the committee has had in the past with the Agency has in some cases been one of mistrust or misunderstanding in the sense that hearings were held and things were agreed to and then the actuality did not turn out to be anywhere close to the agreement.

I would hope that we would have the relationship now that if we have meetings and we agree we are going to try to go in some direction, you will feel an obligation to let us know if you have some change; that if OMB gives you a problem, at least we find out about that as quickly as we can so we are in a position to help you with regard to either the meeting of commitments or modifying the commitments, whichever is most appropriate.

Would you feel comfortable with that?

Mr. RUCKELSHAUS. I certainly would, Mr. Olin.

I have argued for years that one of the things that we need in the laws that EPA administers is a stronger expression of trust from the Congress to the executive branch.

It is not so much true in FIFRA, but it is true in a lot of the other laws that we administer, that there are very strong expressions of mistrust on the part of the legislative branch.

Well, if we do not act, if the administrative branch does not act in a way that it ought to be trusted, then it is hard to blame the Congress for writing those kinds of provisions in the laws.

So I think it is up to us to make sure that we establish a level of trust with the Congress that in turn buttresses our suggestions that the laws be written in that way, and if we make a commitment to you that it turns out later we have trouble keeping, I think we have an obligation to come back and tell you why.

Mr. OLIN. I would certainly appreciate that myself, and I expect the committee would.

Thank you, Mr. Chairman.

Mr. BROWN. Mr. de la Garza, would you care to ask any further questions at this point?

Mr. DE LA GARZA. No, thank you, Mr. Chairman.

Mr. BROWN. Mr. Roberts.

Mr. ROBERTS. Yes, Mr. Chairman. Thank you.

I would like to point out for the record and also to my colleague from California, Mr. Panetta, in regard to the question of adequate personnel, that the chairman and I both testified in behalf of increased authorizations, increased appropriations, and additional personnel for the Office of Pesticide Management.

We lifted the ceiling. We increased the number of personnel. I just wanted to indicate to you that this subcommittee stands ready, on a bipartisan basis, to provide you or at least to provide support for the kind of personnel team that you want on board.

I would like to apologize for taking the subcommittee's time in this reference, but it is something I feel very strongly about.

I have a letter from a farmer in St. Francis, Kans., by the name of Greg Wolters, who went through a rough time this summer with the European corn borer, and he says, and I am just quoting from the letter, and please forgive me for reading this—I am not going to read it all, but I think you will get the drift of what I am trying to say.

In past years, I have treated my fields with either Ambush or Pounce and, in my opinion, have gotten good results. This year, however, when signs of the corn borer started showing up, I did some checking and found that these pesticides would not be available this year because they did not have a Federal label for use on field corn.

More checking, and I discovered that there were some alternative pesticides

—and he goes ahead and names them.

However, all data I have seen comparing the four chemicals that I have mentioned shows that Ambush and Pounce are the most effective. Furadan is not too far behind, but we have to wait 10 to 14 days after treatment before going back into the treated field because it is too poisonous to humans.

So what do I do if a motor or pump breaks down after treating the field with Furadan? I see only two choices: stay out of the field and let the corn burn up, or go into the field and fix the problem but risk permanent injury to myself. Some choice.

Additionally, Furadan is approximately \$3 per acre more expensive than Ambush or Pounce.

And he goes on to go down the laundry list of the other chemicals which are in the same category.

So my problem is that I have to use a chemical that I know doesn't do the best job and is more toxic to me because of some reason that the EPA has found or Congress has found or somebody has found in Washington. The only reason I can think of is the Delaney clause, and that reason is invalid because both chemicals, Ambush and Pounce, are labeled for use on sweet corn, celery, and other garden-type crops. In other words, I can eat it, but I can't go on the field with it.

In conclusion, I know that not being able to use Pounce or Ambush is costing me and farmers in my situation and the consumer as well. It is not a matter of public health; it is a matter of irresponsible regulation.

Then there are some other comments here that would not be fit to be repeated in the atmosphere of this subcommittee, getting into the description of folk in Washington and what they do or do not do. [Laughter.]

Let's not have Federal labels for some crops and not for others. Thank you for your time, and any assistance in straightening this out and making the labeling consistent will be greatly appreciated.

Now, I get a lot of letters from people worried about public safety, and I am concerned about it, but I also get quite a few letters wondering what on Earth we are doing back here with these kinds of regulations that pose real hardship to the farmer-stockmen.

That was in essence what I was saying to you before, if you have a message for these folk. What do I tell Mr. Wolters?

Mr. RUCKELSHAUS. I hope you don't tell him it is my fault. [Laughter.]

Mr. ROBERTS. No, you haven't been onboard long enough, as has been amply discussed in the subcommittee.

Mr. RUCKELSHAUS. It will be shortly if it isn't now.

I think one thing we could do is attempt to respond to you for the complaints that he raises in his letter. I don't know exactly the situation—

Mr. ROBERTS. Oh, I think every Congressman uses that prerogative very well of letting the agencies give them the bad news as opposed to the good news.

But I am more interested in the fact that this is a real problem, and I really don't see any way out of it with the current Federal policy. We need to take a good look at that.

Mr. RUCKELSHAUS. Yes, all right. I think that is fair enough.

Mr. ROBERTS. Thank you, Mr. Chairman.

Mr. BROWN. Mr. Gunderson.

Mr. GUNDERSON. No questions.

Mr. BROWN. Mr. Ruckelshaus, I have a question or two that I would like to explore with you.

First, we have had, over the last year or so, kind of a running battle with the Agency over a staff report which the subcommittee has prepared, and in an effort to make it fair and have all of the facts, we have asked the Agency to respond to certain questions in writing, so that we could complete the report in a reasonable fashion.

One of the areas which touched a nerve over there was the cancer policy issue. I think that the Agency became suspicious that we were trying to make a political hullabaloo about this, when actually the facts are that we want to lay out the situation so that everybody can understand it more than anything else.

A number of the questions that we submitted in writing several months ago still have not been answered, and I would like to propound to you the question of, are you going to answer those questions or not, and if so, when?

Mr. RUCKELSHAUS. We will answer your questions quickly, Mr. Chairman. I think if you asked the Agency to respond to questions that are on your mind, we ought to answer them as expeditiously as we can.

Mr. BROWN. I would appreciate it if you would check on that. I will be glad to submit to you a copy of the unanswered questions and solicit your response to them in a prompt fashion so that they may be included in the published report of the subcommittee's hearings and reports.

Mr. RUCKELSHAUS. Fine, Mr. Chairman. In fact I will share a memorandum with you that I sent around the first of this week on that very subject, not on this particular set of questions but on the necessity of responding to inquiries from the Congress in an expeditious fashion. I think we have got to get better at that.

Mr. BROWN. All right.

You indicated—and you have indicated publicly—a degree of support for certain recommendations made by the National Academy of Sciences with regard to how we go about the process of cancer risk assessment.

I want to follow up on that if I can. I know that you are familiar with the report. It contains some specific recommendations. No. 1, and I think the highest priority, is that the scientific task of risk assessment should be separated from the regulatory task of risk management.

I would like to ask you to comment on how you see this being accomplished in the pesticide program.

Mr. RUCKELSHAUS. We have initiated a review across all of EPA on the processes by which we assess risk.

The risk assessment process is a pure scientific process. It should not be in any way confused with the policy of what we do about the problem.

We assess risk in different ways across EPA, and if you get outside EPA into the other risk management agencies of the Government, there is a tremendous difference in the way risk is handled and assessed.

I think there is a terribly important public imperative that we start assessing risk in a consistent way, that we give these risk management agencies a clear—both regulatory and statutory—mandate as to what their risk assessment versus risk management responsibilities are. I am working with the Government now to try to get that done. I have met with eagerness on the part of my counterparts in other risk management agencies who have likewise had some frustration over the process.

Inside the Agency, we assess risk both in the program offices and in the Office of Research and Development. We sometimes use the Science Advisory Board to help us in our risk assessment, both methodologies and in reviews, and I think we have to get better at the way we assess risk; we have to get better and more consistent in the way we talk about it. We need to talk about it in ways that the public can respond to. We recognize not only what we can

achieve through sound assessment process but also what we cannot achieve. There are limits to how much you can actually learn through the risk assessment process, and we have to be very frank about that.

But then the next question is, "What do we do about it?," which is where risk management comes in. That depends very much on the mandate in the statutes that we administer, and I frankly think the mandate in FIFRA is a pretty good one.

Mr. BROWN. I think all of us on the subcommittee recognize the fact that different statutes prescribe different risk management programs.

The thing that confuses the public is that, generally speaking, there is an inadequate distinction between the risk management and the risk assessment.

It is my view, my personal view, that we should make an effort to enlighten both the Members of Congress and the members of the public as to the difference between the scientific risk assessment on which, generally, scientists can reach a common agreement, and the problems of risk management, which are mandated to meet different standards in different agencies for different reasons.

Generally, we hope they are sound reasons, but they may not always be. But we cannot even begin this process of education unless we clearly distinguish between the two; hence, my question as to whether or not you can take some action that would further that goal, and we hope that you will be able to do that.

Mr. RUCKELSHAUS. That certainly is my goal inside EPA, that we make a very clear distinction.

There is probably as much experience in the Pesticide Office attempting to distinguish between risk assessment and risk management and separate the two as anyplace else in the Agency; and we need to develop inside the Agency a consistent approach to it, a clarity that there is a distinction between the two, and communicate that to the Congress, to the American people, and I think we will all be better off if we do that.

Mr. BROWN. That is my second question.

The second recommendation of the Academy report says that before an agency decides whether a substance should or should not be regulated, a detailed and comprehensive written risk assessment should be prepared and made publicly accessible. It does not say you broadcast it, but at least it should be accessible.

This written assessment should clearly distinguish between the scientific basis and the policy basis for the agency's conclusions.

You indicated that you are in general agreement with this. Would you care to reiterate that?

Mr. RUCKELSHAUS. I could not agree with it more. There are occasions where we have deadlines in which we have to act, either imposed by legislation or by court order, where our risk assessment, the science behind which we decide to do anything, does not get the kind of public airing that I think it should.

That is one of the reasons I am concerned about deadlines. Now, people are also concerned about delay, and I think that also is justifiable. Sometimes it is necessary for us to act even when we don't have all the facts we would like to have.

But, by and large, I thoroughly agree with that statement. I think whatever scientific basis we have for trying to make a judgment as to whether we ought to do anything should be totally aired to the public. It ought to be peer-reviewed scientifically, and we ought to have very rigid standards for insuring that the quality of our science is as high as possible.

Mr. BROWN. The Academy report at least hints at the need for a Government-wide peer review panel of some sort to do this. We do not have such a mechanism at the present time. We do have, at least if we reenact the authorization bill that this House has already passed, a Scientific Advisory Panel in the EPA.

My question to you is whether or not you think this peer review, scientific peer review, could be done by the Scientific Advisory Panel, or should we move in some reasonable way to establish a Government-wide cancer review or risk review mechanism that would meet the needs of all of the agencies faced with this problem.

Mr. RUCKELSHAUS. I think that is a very interesting question, and I am not certain yet what we ought to do. In the first place, I think we ought to complete the risk assessment. There ought to be a peer review process of some kind so that we can insure that whatever science we have is as sound as possible.

Whether it is better to do it inside an agency or whether there ought to be some Government-wide mechanism, I do not know. There are problems associated with giving this kind of responsibility to an institution like the National Academy of Sciences. They have tended to resist being the institution for peer review in the past, and there isn't a solution which immediately leaps to mind, it seems to me, as being the panacea that everybody is searching for.

In the meantime, we are working inside the Agency to insure that our science is peer reviewed. I am working outside the Agency to see if we cannot at least harmonize our risk assessment approach across the other risk management agencies of the Federal Government, and it may well be that some sort of Federal or Government-wide agency would make sense.

Mr. BROWN. Mr. Ruckelshaus, one of the witnesses, at an earlier hearing of this subcommittee, made a comment in which he compared the cancer risk management practices of this administration and prior administrations.

He indicated that he thought that in at least some situations in the past, EPA has overregulated products which had been found in laboratory experiments to cause cancers, and that under this administration, prior to your coming in, of course, the opposite had taken place, that there was an underregulation.

I presume the implication is that that poses some problems for public health.

Would you care to comment on that kind of statement as to whether you think we are under- or over-regulating potential cancer-causing agents at the present time?

Mr. RUCKELSHAUS. I don't have any doubt that we are doing both. There is so little we know about the causation of cancer; the extrapolation from the animal studies to man and what kind of models you use. Do you assume a threshold or do you not?

There is no doubt in my mind, if you went down substance by substance, you could find one where a case could be made that we have either over- or under-regulated.

I don't really find generalizations about what is done in one administration versus another very helpful because I am sure that when a person makes a generalized statement, he has got some specific situation in mind that he is referring to, that I may or may not be familiar with.

It is my view that the problem of how we go about regulating public health, particularly as it relates to carcinogens, is a terribly complicated subject. It is a very important subject, and we need to get a better understanding both in the regulated community and among the regulators themselves and among the general public as to what it is we are doing, and what we are trying to do in the process of regulating carcinogens.

I don't think we are very good at it yet, to tell you the truth. I think we have a long way to go before we are good at it. I frankly think it is a kind of central question for a society like ours as to whether we are going to get any good at it.

But I do think that there are processes, at least, that we can put in place where it is more likely we will get better at regulating carcinogens, mutagens, and teratogens, than we have in the past.

Mr. BROWN. Presumably, the steps that you are taking in this area will help to resolve some of those problems which you indicate exist, based upon the lack of an adequate scientific base in this area.

Mr. RUCKELSHAUS. I hope so. That is certainly my goal.

Mr. BROWN. I have a few other questions, but I will recognize any member of the subcommittee who may wish to be recognized at this point.

Mr. Volkmer.

Mr. VOLKMER. I was going to defer until you are finished.

Mr. BROWN. No, I think we ought to alternate a little bit, Mr. Volkmer.

Mr. VOLKMER. I just wanted to go back over one part very hurriedly on the cut and paste situation, where I understand you said that you will submit reports to the subcommittee on the ongoing audit as it progresses.

Mr. RUCKELSHAUS. Yes, we will.

Mr. VOLKMER. When can we expect the first report on that?

Mr. RUCKELSHAUS. We submitted a rather comprehensive letter on September 30, Mr. Volkmer, on this subject. It was to the chairman, reviewing what we had done so far, what our findings were to date, what steps we were taking to try to deal with the problem, and we will be making periodic reports to the committee as the consultant and our management go through the problem and as we uncover information that we think would be of relevance to the committee's deliberations.

Mr. VOLKMER. If it wouldn't be too much difficulty, do you believe that you could send copies to each member of the subcommittee?

Mr. RUCKELSHAUS. No. We will be glad to.

Mr. VOLKMER. Thank you.

Now, as the gentleman from California, the chairman of the subcommittee, pointed out, you were basically here before back when the 1972 pesticide bill was enacted. We required then the reregistration of all pesticides, and now it appears that we have a delay in that program and in the data to be able to fulfill it.

Can you tell us what you are doing in regard to, let's say, filling what we call the data gap on that reregistration program?

Mr. RUCKELSHAUS. We have done three things.

We have a program to try to distinguish between those chemicals for which we think there may really be a problem and have undertaken what we call a special review of those chemicals to determine whether in fact there is a problem associated with it.

We have called in data where we have discovered data gaps from the registrants to try to fill those gaps. And we have issued new standards, registration standards, in which we have curtailed some of the uses involved. We have changed the labels or, if necessary or we think it is appropriate, we have reaffirmed existing uses, and we are going through those registered pesticides for which there are data gaps on a systematic basis.

The dispute is whether we are doing it fast enough. The dispute really is whether the pace that we have adopted is a proper one or whether we are going too slowly.

The pace at which we proceed is partly resource related. It is partly related to the kinds of priorities that we have set in which we are trying to distinguish between those pesticides for which we think there may be the biggest problem, those where the biggest data gaps exist in drawing priorities.

Over the last several years, we have reviewed several of the existing pesticides consistent with the priority criteria that I mentioned.

Mr. VOLKMER. By lack of resources, do you mean personnel? Is that equipment? What is the lack of resources?

Mr. RUCKELSHAUS. We are always in this discussion with the Subcommittee as to whether or not we have adequate resources.

Mr. VOLKMER. Right.

Mr. RUCKELSHAUS. It is a question of, if we have more people and more money, we can go faster, and the question of whether, consistent with all of the various priorities of this society, are we going at the proper pace in achieving registration. If this were the only thing we were looking at, you could probably make an argument that we ought to go faster. But in terms of the overall budgetary responsibilities that the Agency has, it is my assumption that however big that pie is that we have to slice up at EPA, it is bound to be limited some way. We have tried to make a judgment in terms of the allocation of resources for this particular program on the basis of, are we going fast enough. On the basis of the reviews we made in dividing the pie we currently have, I would have to say that, balanced across EPA, the pace is about right.

Now, if you were to ask me, could we go faster with more people and more money?, yes, we could. But that is true in a lot of other areas that we have to administer as well, and the Agency is undoubtedly going to have some sized pie to carve up, and on the basis of what we currently have, I think that we have it paced about right.

Mr. VOLKMER. At the time you make an analysis of H.R. 3818, would you be able to give us some idea as to where you are in the progression of doing the reregistration? In other words, on the timetable that you have, with the resources that you have, where will you be 2, 3, 4, or 5 years from now? Could you do something like that?

Mr. RUCKELSHAUS. We certainly will.

Mr. VOLKMER. And the last area I would like to cover is on efficacy and the question of closing down the laboratory in Beltsville.

Mr. RUCKELSHAUS. I am sorry, I did not hear that last part.

Mr. VOLKMER. The efficacy testing in Beltsville.

Mr. RUCKELSHAUS. Yes?

Mr. VOLKMER. The closing down of the facility for doing it.

Mr. RUCKELSHAUS. We closed down the facility for testing disinfectants in hospitals.

Mr. VOLKMER. Right.

Mr. RUCKELSHAUS. The rest of the facility is still operating.

Mr. VOLKMER. But the disinfectants portion does not?

Mr. RUCKELSHAUS. Yes, that is right.

Mr. VOLKMER. There is no program on that, then.

Mr. RUCKELSHAUS. In the first place, we thought the program itself was inadequate. I have sent a rather detailed letter to Senator Sarbanes about that. We thought that the program that we had there was not really sufficient to meet the needs of the society for testing the efficacy of disinfectants, and we think there are other ways to approach this to insure that the efficacy of disinfectants is properly tested.

It was unlikely that we were going to expand that Federal program sufficiently to meet the total needs for efficacy testing, and in some ways we were misleading people by having that, by giving them the impression we did have an adequate program to insure that the efficacy of disinfectants was sufficiently tested.

What we have done is examine different approaches to getting it done, and those are all spelled out in that letter. I would glad to get you a copy of it.

Mr. VOLKMER. Then all efficacy testing for other fungicides or insecticides, et cetera, is continuing?

Mr. RUCKELSHAUS. Yes.

Mr. VOLKMER. It is just on the disinfectants.

Mr. RUCKELSHAUS. We don't do much efficacy testing of pesticides.

Mr. VOLKMER. I know.

Mr. RUCKELSHAUS. We assume the marketplace will dictate that.

Mr. VOLKMER. Yes.

Thank you, Mr. Chairman.

Mr. BROWN. Mr. Ruckelshaus, going back to the cancer problem and the recommendations of the National Academy of Sciences and your support for making a clear distinction between the risk assessment process, the scientific process, and the risk management process, that is one of the things that the subcommittee has considered in connection with any rewrite of the FIFRA statute.

I would like to ask you whether or not you feel it might be possible to draft language which would be acceptable to you that would clearly establish that principle as a matter of law. It would, of

course, in my opinion—I may be mistaken—give added strength to getting all of the agencies to move in that direction. Even though the FIFRA statute might not be binding on all the other agencies, it would be a precedent which, I think, would give added weight to moving in that direction.

Do you think such language could be drafted that would have your support?

Mr. RUCKELSHAUS. I think it could, Mr. Chairman. I am not sure that it is not possible to do that under the existing statutory framework of FIFRA.

Mr. BROWN. I think it probably is possible to do so, but it is not necessarily being done, and it might be done more efficaciously if there were specific reference to it in the law.

Mr. RUCKELSHAUS. It is my intention to do it. Administratively, I think that to the extent there are problems with that separation, or have been problems with that separation in the past, we certainly should avoid them.

There is a bill currently pending before this House on the separation of risk assessment and risk management, a bill suggesting that the National Academy of Sciences, for instance, have a role in the risk assessment process.

Mr. BROWN. Is that the Ritter bill?

Mr. RUCKELSHAUS. Yes. Congressman Martin has suggested some amendments to it. I have discussed it with Frank Press at the National Academy, and the bill itself may well have some merit to it, and we are continuing to review it and see if that approach might really make sense.

But I don't doubt that you could write it into the statute and make it very clear that—

Mr. BROWN. It could give the EPA a leadership role in establishing this as a Government-wide policy, I think.

Mr. RUCKELSHAUS. We are hoping to do that by administrative example. Whether we accomplish that or not, why, time will tell.

Mr. BROWN. Let me ask you another question, again having to do with the statute itself.

In your statement, you mention your commitment to opening up the decisionmaking process at EPA. In this regard, would you look favorably upon the language having to do with so-called standing, the 6(b) section of FIFRA, which would broaden the rights of certain public interest groups to participate in the proceedings in the Agency?

Mr. RUCKELSHAUS. I have not examined that particular section. I do know that is one of the concerns that has been expressed in the suggested bill before the subcommittee. As I say, I have a strong bias about this, that we should provide equal access. I think it is something that we owe people almost as a right in this society, and to the extent that we can harmonize the achievement of that open access to the decisionmaking process and not cause unwarranted delay in the decisions actually being made, that is the balance that I think has to be struck, and that is the approach that I would like to take.

I think that reviewing the entire procedures by which access is provided and, at the same time, insuring expeditious action on the part of the Agency is the approach that we ought to take.

Mr. BROWN. Well, you have already indicated that you will subject some of these questions which are contained in the so-called Harkin bill to scrutiny at your Agency and give us a detailed analysis. But I have mentioned these because some of these points are particularly touchy.

Let me conclude by asking you a couple of other, more general questions.

You have devoted some attention to the ground water problem in your statement. It has become increasingly recognized as a problem of national significance, both ground water quality and ground water quantity, the depletion of ground water and the lack of adequate scientific research on ground water. It has been the subject of a rather extensive report prepared by the Office of Technology Assessment and submitted to the Congress. Hearings have been held on the problem in other committees as well as in this committee.

Amongst the options listed in the OTA report that the Congress might take is to focus some additional resources on ground water research. I should make it clear that we just passed, this last week, a ground water research bill which allocates funds to each of the 50 States to carry on a program of ground water research, very small amounts, but this is in recognition of the fact that ground water problems tend to be highly site specific, and each of the States has a need for this capability.

The problem seems to be that in no case would any one State have the resources or probably the ability to address the problem as a national issue. Therefore, the OTA recommends the possibility of a national research facility similar to what we already have in the field of atmospheric research, the National Center for Atmospheric Research in Colorado, which is directed by a consortium of research universities and focuses on the national problem of atmospheric research.

Would you care to comment as to whether such an approach to the problems of ground water research might be reasonable from your standpoint?

Mr. RUCKELSHAUS. Well, I would certainly want to very carefully review such a recommendation.

One of the problems that I think we have at EPA, even where an Agency integrates a lot of regulatory programs as they relate to various media, is integrating our research efforts across media lines, whether it is air, water, or ground, and insuring that, for instance, the control of toxic substances under the Clean Air Act does not simply transfer the problem to land or to the water is something that we are in the very early stages of doing very well.

We have a toxics integration task force in the Agency that is trying to look at toxic substances across all media, to insure that we simply are not moving them from one place to another as we try to grind down on the particular media as a receptor of the toxic substance.

A ground water research effort that was not carefully integrated into the other potential receptors of toxic substances, for instance, would not be a good idea. On the other hand, it could be integrated, and it might be an approach that could be taken.

As I suggested in my statement, we do have a ground water task force. We are trying to integrate our own programs as they relate to ground water, whether it is pesticides, the Safe Drinking Water Act, the Resources Conservation Recovery Act, the Superfund law. We have ground water regulatory responsibilities in all of those laws, and we have got to be very careful about how we integrate the implementation of those responsibilities.

If we find any gaps after we have looked across the board at our own responsibilities, in a regulatory sense, we hope to identify those and have some suggestions for change.

Mr. BROWN. You will be called upon to respond to this kind of question I have just asked you, probably in several different settings, because it is a part of a report which the Congress asked for, several committees in both the House and Senate, and it has a certain reasonableness about it on its face.

We all recognize that it is a crosscutting problem that affects many jurisdictions, many agencies, with different responsibilities. How you get a unified research approach to that is a very difficult question to answer, and the model of a research facility or institution with broad-ranging mandate and operated by or working under the direction of our leading universities that have water research capabilities might provide answers to many of the agencies and their problems.

It is a model which has been followed in other connections. Another one that comes to mind immediately that might profit from similar attention is the overall problem of monitoring, which your statement speaks to, also. Different agencies monitor for different purposes. Monitoring also occurs at both State and local levels and by private institutions.

The missing link is some sort of an integrating, policy-directing institution or capability—I won't even call it an institution—which brings together all of these diverse and sometimes even conflicting efforts into a sound national monitoring program that meets all of our needs.

In this case, I think, in the case of water research, despite EPA's very large responsibilities, I am inclined to favor a major role for the Department of Agriculture because the largest user of ground water is agriculture.

In the case of monitoring, I would tend to feel that EPA ought to be the lead agency because of the multiplicity of your monitoring responsibilities.

Mr. RUCKELSHAUS. I am not here pleading for any more responsibilities, Mr. Chairman.

Mr. BROWN. I understand that.

Mr. RUCKELSHAUS. I am having trouble carrying out the ones I now have.

Mr. BROWN. And the time is not propitious to think in grandiose terms of new institution building, but in a very real sense, when this country is concerned about the productivity and the cost effectiveness of its operations, I think we could look at ways in which we could better use the resources we are now applying to some of these critical problems.

Mr. RUCKELSHAUS. I cannot disagree; I think you are right. Some things like monitoring have to be viewed as an investment in the

future. If we had better monitoring data on things like acid rain, for instance, 10 years ago, at a relatively modest expenditure, we would be in a much better condition today to understand the nature of the problem and know exactly what we ought to do about it.

Instead, now we are trying to respond to growing public concern about the issue with inadequate information, inadequate monitoring information, trend information, and I think it would be a very wise investment to have that kind of data.

Mr. BROWN. Let me just conclude by saying that I tend to take a long-term view of these problems, Mr. Ruckelshaus, and many of the Agency people that I have had before me over the years, I have told them that I can understand why they are doing such a stupid job, but in 10 years I don't want them to tell me the same thing. And frequently they come back in 10 years and tell me the same thing, and this I don't think we ought to tolerate. I trust you would agree with that.

Mr. RUCKELSHAUS. I would agree. When I am back in my third term 10 years from now, Mr. Chairman, why, it will all be straightened out. [Laughter.]

I agree with you.

Mr. BROWN. All right. I have no further questions, Mr. Ruckelshaus.

I think you have done an excellent job this morning. I commend you for it. We will be in close touch with you in the future. Thank you very much.

Mr. RUCKELSHAUS. Thank you.

Mr. BROWN. Without objection, I would like to have the record include a letter from Senator Sarbanes, together with accompanying materials, dealing with the problem that has been brought up by Congressman Volkmer, and that will be made a part of the record.

[Material follows:]

PAUL S. SARBANES
MARYLAND

United States Senate
WASHINGTON, D.C. 20510

November 1, 1983

Honorable George E. Brown, Jr.
Chairman
Subcommittee on Department Operations,
Research, and Foreign Agriculture
1430 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

It is my understanding that your Subcommittee will be holding hearings on legislation you have sponsored regarding the reform of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). I am writing to urge that you raise questions during these hearings about EPA's continuing failure to resume, after more than a year, biological efficacy testing of pesticides and disinfectants.

As you may know, the EPA ceased operations last year at the only federally owned laboratory in the country equipped for and capable of conducting biological testing. EPA is therefore incapable of carrying out independent, objective tests to verify data regarding safety and efficacy being submitted by manufacturers seeking to register new chemicals. The EPA is also incapable of responding to emergency requests for tests on products involved in accidents or otherwise suspected of being unsafe or ineffective.

There have been strong expressions of support for continued testing from State environmental officials and university researchers throughout the country. Representatives of the chemical industry have also expressed concern at the loss of an independent facility to set standards and interpret data. I am enclosing a copy of my letters to the Administrator on this matter together with supporting documents.

The legislation I have introduced in the Senate, S. 780, will require that EPA continue to maintain an in-house facility to verify data supplied in connection with new product registration applications. The bill would also require that EPA periodically test samples of products already on the market. This legislation would mandate the resumption of a reasonable testing program that should never have been abandoned in the first place.

I have attached some facts and sample questions for your use should you decide to pursue this matter with the Administrator or other witnesses at the hearings.

With best regards,

Sincerely,


Paul S. Sarbanes
United States Senator

PSS/jpo
Enclosures

EFFICACY TESTING FACT SHEET

- 1) No efficacy testing is now being done. The only lab capable of conducting such tests has been closed for over one year.
- 2) There are only 3 states doing their own testing. The other 47 states have no testing programs or facilities.
- 3) The cost to resume testing is insignificant - \$600,000 annually by EPA's own figures.
- 4) Industry groups, such as CSMA, support federal testing on the grounds that 50 state programs, even if they were possible, would represent a needlessly duplicative and expensive way of screening products.
- 5) The resumption of federal efficacy testing is supported by industry, environmental and user groups as follows:

Industry

CSMA - Chemical Specialties Manufacturers Association
NACA - National Agricultural Chemical Association

Environmental Groups

Natural Resource Defense Fund
Coalition Against the Misuse of Pesticides
National Audubon Society

User Groups

American Society of Microbiologists (ASM)
National Association of State Departments of Agriculture (NASDA)
National Pest Control Association (NPCA)

PROPOSED QUESTIONS FROM
SENATOR SARBANES ON EFFICACY TESTING

- 1) Without a federal testing facility, what capability does EPA have to verify data being submitted regarding the biological effects and efficacy of pesticides, disinfectants and other products covered by FIFRA?
- 2) Is it not a fact that during the peak of testing operations at the now closed Beltsville lab a high percentage of disinfectants tested were found to be ineffective or to have effects other than those claimed by the manufacturer?
- 3) What is EPA doing today to respond to questions regarding the efficacy of products such as disinfectants that are in heavy daily use in this country?
- 4) How many states are actively moving towards developing their own testing programs?
- 5) Even if the states were to gear up their own testing programs does it make sense from the standpoint of efficiency or regulatory reform to set up 50 state programs to test products that are marketed nationally?
- 6) In the case of disinfectants, rodenticides and herbicides where failure to perform can have serious public health consequences is there not a clear connection between efficacy testing and public safety?
- 7) Absent federal testing, what is the EPA doing to carry out its responsibilities for ensuring both safety and efficacy of products covered by FIFRA?

Mr. BROWN. The subcommittee will stand adjourned until this afternoon at 2 o'clock, when we will hear four additional witnesses starting with our colleague, Congressman Heftel.

[Whereupon, at 11:50 a.m., the subcommittee recessed, to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

Mr. BROWN. The subcommittee will come to order.

With any luck, we can allow Mr. Heftel to complete his testimony and go answer the roll call.

We continue this afternoon with a hearing on H.R. 3818 and H.R. 3252, authored by our good friend and colleague from Hawaii, Mr. Heftel. In order to expedite matters, I am going to ask you to proceed with your testimony and we will try to complete it before we have to recess for the vote.

You may proceed.

STATEMENT OF HON. CECIL HEFTEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF HAWAII

Mr. HEFTEL. Thank you very much, Mr. Chairman.

In view of the fact that I move a little slower than I have in the past and we have got a 15 minute vote pending, I will take this occasion to thank you for your interest and leadership in the whole pesticide area, ask unanimous consent to place my statement in the record and briefly summarize the objectives of the legislation.

Mr. BROWN. Without objection, the full text will be included in the record just as if you had delivered it with great eloquence.

Mr. HEFTEL. I don't know about the great eloquence, but I would hope I could have delivered it.

Commonsense should tell us that if we control the pesticides used on the food domestically produced in the United States, the same controls should apply to the food which we import. At the present time we are not doing this. We have neither knowledge of nor control over the pesticides used on the imported food products.

This means, first, that our farmers are at a competitive disadvantage, and, second that we are defeating the purpose of controlling pesticides used domestically. We, the world's largest food importers, are permitting unknown pesticides to be applied to the food coming into this country.

We know that pesticides are manufactured and shipped abroad which are not used here. We know that there is no system for providing EPA or any other agency of our Government with the necessary information about pesticides being shipped abroad, the manner in which they are being used, and the products on which they are being used. We also know that many of those products are coming back into this country.

I hope that the committee sees fit to integrate my recommendations into any legislation regarding the use of pesticides internationally. We noted in Mr. Ruckelshaus's statement, he is aware of the international situation, but he has not pinpointed the problem nor has he indicated the need for this type of legislation. I feel that as we realize what pesticides are doing to our health, we will want

to apply the same standards to food imported to the United States as we do to food produced domestically in the United States.

I thank you very much, Mr. Chairman.

[The prepared statement of Mr. Heftel appears at the conclusion of the hearing.]

Mr. BROWN. Thank you, Mr. Heftel.

As you know, the subcommittee has held hearings on this subject and is familiar with the problem. While we have not had a chance to discuss the details of your bill, we intend to do that, probably tomorrow. My observation is that there is a very favorable climate in the subcommittee for taking action along the lines that you recommend. We certainly will want to consider the subject in some detail, and to follow your suggestions in any changes that we might make to the pesticide legislation.

Having said that, I am going to recess the subcommittee so that we may vote on the Long amendment which is a very important matter involving withdrawing the Marines from Lebanon.

The subcommittee will be in recess.

[Recess taken.]

Mr. BROWN. The subcommittee will come to order. We apologize to the witnesses for the delays necessitated by the votes.

Our next witness this afternoon is the Honorable C. W. McMILLAN, Assistant Secretary for Marketing and Transportation Services of the Department of Agriculture. We welcome you here this afternoon, Mr. Secretary. Of course, your full statement will appear in the record if you summarize.

**STATEMENT OF C. WILLIAM McMILLAN, ASSISTANT SECRETARY,
MARKETING AND TRANSPORTATION, U.S. DEPARTMENT OF AGRICULTURE**

Mr. McMILLAN. Thank you very much, Mr. Chairman. It is a pleasure for me to be here.

Inasmuch as I do have a rather short statement, I will read it.

Mr. BROWN. Certainly.

Mr. McMILLAN. We fully recognize that those who use chemical pesticides must be mindful of the possible adverse effects on the environment and food safety. While we are firmly committed to developing biological methods of pest and disease control, the agriculture industry remains largely dependent upon chemical pesticides to protect against pests and diseases that cause serious economic damage if allowed to go unchecked. The safe use of efficacious pesticides is essential to support the agricultural community by helping protect our productivity and our access to foreign markets.

Making major changes in the Federal Insecticide, Fungicide, and Rodenticide Act would greatly affect American agriculture. In light of Administrator Ruckelshaus's desire for time to organize the toxic substances area of the Environmental Protection Agency and since the new Assistant Administrator for Pesticides and Toxic Substances has not yet been confirmed, it would be inappropriate for the USDA to offer specific comments on these bills. Nevertheless, I would like to express some general concerns of the agricultural community.

We are concerned that H.R. 3818 may remove the Administrator's flexibility to base regulatory decisions on the full range of environmental effects, including those that could result from "no use" of a product in an agricultural crisis. For example, it replaces "may" with "shall" throughout, thereby removing the Administrator's ability to balance large-scale benefits against a low level or limited risk to man. By deleting the term "generally" from "will not generally cause unreasonable adverse effects on the environment" which is section 3 of the act, and by narrowing the current standard of "unreasonable risk" to man, the bill further erodes the flexibility that we believe is essential in regulatory decisionmaking.

The restrictiveness of the bill may also discourage the private sector from pursuing research and development activities needed to insure a supply of safe and efficacious products. By opening up several legal avenues for pesticide opponents and by changing public disclosure requirements, the bill creates a disincentive for those seeking pesticide registration. The registration process would be slowed, further adding to the cost.

The major concern of the agricultural community is that the restrictive and far-reaching nature of H.R. 3818 could seriously harm our agricultural productivity without measurably improving environmental protection.

If more agricultural chemicals are removed and there is insufficient incentive to replace them, our productivity would suffer, with consumers facing significantly higher prices for food and fiber.

The agricultural community has a similar concern with H.R. 3254. A system is already in place for testing imported meat for foreign residues, and we are not convinced that this bill would markedly improve it.

Mr. Chairman, I would like to reiterate our commitment to strict environmental vigilance. It is essential to protect not only our resource base but also our quality of life. We must make sure, however, that our regulatory decisions reflect consideration of the full range of environmental consequences. The agricultural community has serious doubts that H.R. 3818 permits this kind of balanced approach to managing benefits and risks.

Regarding H.R. 3254, Mr. Chairman, in the interests of time, I would refer the subcommittee to USDA's testimony of June 9, on the general subject of pesticide residues in imported product. In that testimony, we discussed in detail USDA's responsibilities as mandated by the Federal Meat Inspection Act and the Poultry Products Inspection Act and regulatory efforts to assure that imported meat and poultry products meet U.S. required standards.

I would today simply reiterate that USDA's broad-based program to control pesticide residues in imported products is strong and effective. Therefore, we believe any additional requirements mandated by H.R. 3254 would be of marginal significance in improving on our present regulatory abilities to assure that imported food does not bear unsafe pesticide residues.

The Department, further, is greatly concerned with the trade barrier aspects of the bill. Under both the General Agreement of Tariffs and Trade and the Tokyo Round Agreement on Technical Barriers to Trade, the United States has an obligation not to adopt unnecessary technical barriers to trade. Since the additional infor-

mation the bill would require of foreign governments would not significantly add to our ability to protect health or the environment, the United States could be found in violation of this obligation. Such a challenge could be raised, particularly as it applies to the bill's requirement that an importing country must request the export of an unregistered pesticide. At the time of the request, supporting documentation must also be supplied on regulatory requirements governing its use and its intended use in that country.

In summary, current legislative authority is sufficient to insure that adulterated meat and poultry products are not imported into this country. The additional reporting requirements of H.R. 3254 would not enhance our authority and could cause problems in international trade.

Mr. Chairman, that concludes my statement. I would be very happy to try to answer any questions which you or members of the subcommittee may have.

Mr. BROWN. Thank you very much, Mr. Secretary.

Mr. Secretary, with regard to H.R. 3818, you are deferring specific comments on that pending a further review by the EPA, as I understand your statement, but Administrator Ruckelshaus this morning indicated that he would work with the subcommittee in analyzing the individual portions of that legislation to see if the EPA would be able to take a stand with regard to some aspects of the bill. We presume that some are more acceptable and others less acceptable. I wonder if we could get some sort of a similar response from you. Of course, if you cannot, we would understand. However, it would be the hope of the subcommittee, since we are continually faced with this problem of doing something about revising the legislation, to find areas in which there was some degree of agreement. What is your situation with regard to possibly making that kind of section-by-section analysis for the benefit of the subcommittee so that we can see how far apart we really are on this thing?

Mr. McMILLAN. We would be very happy to, Mr. Chairman. Obviously, the Environmental Protection Agency has the prime responsibility for registration of pesticides and, in terms of technical aspects of the legislation, it would be most directly affected. However, we in the Department of Agriculture will cooperate in any way we can.

Mr. BROWN. We would appreciate that commitment. Mr. Roberts, do you have any questions?

Mr. ROBERTS. Yes, Mr. Chairman. Thank you.

Bill, welcome again to the subcommittee. Thank you for a concise and to the point statement.

We have had testimony from the Administrator of EPA in regard to how H.R. 3818 would have an effect on their daily activities, and you are aware of that testimony. What impact do you see this bill having in your day-to-day activities in the USDA?

Mr. McMILLAN. Of major concern, Mr. Roberts, is the fact that so much of the flexibility would be taken away from the Administrator of EPA in the registration of these pesticides. We in the Department of Agriculture, in dealing with those who do use these pesticides as a necessary tool in the production of food and fiber in the United States, think the Administrator must have flexibility in

order to really accomplish the goals that he has as well as the goals of the Congress.

I think a parallel might be drawn, for example, to the Delaney clause in the Food, Drug, and Cosmetic Act. Although not directly related to pesticides, per se, the Delaney clause of the Food, Drug, and Cosmetic Act specifies that there shall be no—meaning zero—residue of any carcinogenic substance present. This rigidity makes it extremely difficult for those agencies charged with the responsibility—in the case of Delaney, the Food and Drug Administration; or, in the proposal under H.R. 3818, the Environmental Protection Agency—to make judgment calls that, in fact, can be scientifically proven to provide safety for the food supply or safety for the environment.

We think flexibility is a necessary part of any administration of these laws.

Mr. ROBERTS. What about your pest management programs? I know that you are involved in that a lot and actually out in the field conducting tests or the evaluation of new products. As you know, we deal a lot with some pests we have out there in the High Plains. I wonder if this would impact on your ability to conduct those kind of cooperative programs?

Mr. McMILLAN. As we interpret this legislation, it would severely hamper the testing of new products and the ability to provide new tools necessary in the production of food and fiber.

Mr. ROBERTS. I think I am probably begging the same question, but I am wondering about State authority to cooperate with you in regard to problems we have in coping with pest problems?

Mr. McMILLAN. Our interpretation of the legislation is that it would have a negative impact on the ability of States to cooperate with the Federal Government on these problems.

Mr. ROBERTS. Let me move to H.R. 3254. What other countries, other than the United States, have a pesticide notification system?

Mr. McMILLAN. To my knowledge, the United States is the only nation that has a notification system.

Mr. ROBERTS. What means do you have now to determine the pesticide uses in countries that are exporting meat and some poultry products to us?

Mr. McMILLAN. It is by inquiry more than any other way. We are in touch with those countries exporting meat, as a specific reference, and we make a determination based upon discussions with them as to what pesticides are being used in those countries. That gives us the opportunity to test for specific residues on a sampling basis when product enters the United States and also requires the exporting country to set up a residue sampling system of their own prior to meat leaving the country of origin.

Mr. ROBERTS. You state in your page, "In summary, current legislative authority is sufficient to insure that adulterated meat and poultry products are not imported into this country. The additional reporting requirements would not enhance our authority and could cause problems in international trade." That might be a general observation, but I would interpret it to be pretty strong in terms of a warning about what could be called a protectionist measure. I have heard some criticism of this bill in that respect. Would you go so far as to label this a protectionist piece of legislation?

Mr. McMILLAN. I think it tends toward protectionism. No doubt about it. In the case of the requirements under the meat inspection act, we say to those countries exporting product to the United States that if you intend to ship product, then you must meet our standards, no more and no less. That is where the residue testing program mandated by Congress comes into place.

It is when you go beyond that particular point that I think protectionism enters into the picture, and I think that is implicit in the legislation we are discussing.

Mr. ROBERTS. I have no further questions, Mr. Chairman.

Mr. BROWN. Mr. Volkmer.

Mr. VOLKMER. I don't believe I have any questions, Mr. Chairman.

Mr. BROWN. Mr. Gunderson.

Mr. GUNDERSON. Mr. Chairman, because the Department has not taken a formal position on the bill and out of respect for my senior Senator who is waiting to testify, I am going to pass at this time also.

Mr. BROWN. Mr. Olin.

Mr. OLIN. I just have one question. Do I take it that your recommendation with regard to the present FIFRA legislation would be to leave it alone?

Mr. McMILLAN. Mr. Olin, the feeling that we have, and we concur in the testimony presented by Mr. Ruckelshaus this morning, is that he should have additional time to really analyze and to dig into these pieces of legislation. We should have an opportunity to have his Assistant Administrator in place since he is the gentleman who will be handling the question of pesticides in particular. Further, since EPA is the Agency charged with the responsibility of registering pesticides and administering the law, we think that they should have the opportunity for further study.

Mr. OLIN. I am not sure that I have made my question quite clear. Without regard to H.R. 3818, the present legislation that is on the books, does the Department have any position with regard to that legislation?

Mr. McMILLAN. In general, we think that the present law is adequate.

Mr. OLIN. Thank you.

Mr. BROWN. Mr. Evans.

[No response.]

Mr. BROWN. One concluding question, Mr. McMillan. I understand your position in deferring to Mr. Ruckelshaus with regard to the timing of any possible changes in the EPA or in the FIFRA legislation, but do you realize how long we have been waiting for changes in the FIFRA legislation? We passed a bill 2 years ago with changes in the FIFRA legislation which did not get through the Senate. We passed a 1-year extension. If that goes through, and we are not assured that it will, we are faced with another effort to pass another 1-year extension next year. How long do we have to wait before we can begin to make some of these changes? I just ask for your informal guidance on this.

Mr. McMILLAN. Well, Mr. Chairman, dealing with legislative processes is always difficult, because there are always issues on both sides of the fence. However, I do think that the manner in

which Mr. Ruckelshaus is approaching the administration of the Environmental Protection Agency is very cautious and conservative. I do think that he, in spite of the difficulty in terms of enacting new or even continuing FIFRA legislation, is entitled to that opportunity. It is a tough position to be in, but that is how I, personally, feel about it.

Mr. BROWN. Obviously, the subcommittee tends to agree with you and with Mr. Ruckelshaus on that issue, but the problems we are having with FIFRA go beyond you and me and Mr. Ruckelshaus and almost anybody else. It demands action at some point. If we continue to have the patience to wait, fine, but at some point we are going to lose our patience I think. Then we don't know what will happen.

Thank you very much for your testimony.

Mr. VOLKMER. Mr. Chairman, could I ask one question? You may not be able to give me the answer, but—

Mr. BROWN. Mr. Volkmer.

Mr. VOLKMER. I am just noting and the gentleman from Kansas asked you about the effect of H.R. 3254 and your statement on that. Do you have any knowledge as to the amount of herbicides and insecticides, et cetera, that may be used by other countries that get themselves into the meat or poultry chain and find themselves back here that are not exported by this country?

Mr. McMILLAN. Not exported by this country but used in foreign countries?

Mr. VOLKMER. Right.

Mr. McMILLAN. I do not know whether that figure would be available, Mr. Volkmer, but let's see if we can find an answer. It may not be a wholly accurate answer, but we might be able to give you an approximation.

[Material follows:]

USDA'S RESPONSE TO QUESTION BY CONGRESSMAN VOLKMER TO ASSISTANT SECRETARY McMILLAN

Mr. Volkmer, the information you requested regarding types of pesticide compounds and the levels at which they are exported by foreign producers to countries exporting meat and poultry products to the United States is not presently available through the Department. However, information along similar lines is being developed as part of USDA's effort to strengthen its evaluation of countries exporting meat and poultry products to the United States.

Questionnaires which were developed to collect data on six basic risk areas, including residue control, have been sent to 12 countries. These countries account for over 90 percent of imported meat products. In gathering this information emphasis is being placed on the evaluation of pesticide compounds likely to be found as residues in products exported to the United States. The comprehensive information obtained from the questionnaires will not only give us a better picture of what pesticides are used in those 12 countries but will help us to assess those country's foreign testing programs and residue control system as well.

As this information becomes available we will be happy to share it with you and the Committee.

Mr. VOLKMER. Thank you.

Mr. BROWN. Thank you very much, Mr. McMillan. We will hold you to your commitment to work with the subcommittee in analyzing those portions of this legislation which you might find desirable or undesirable. We would like to understand what the Department's position is, and we appreciate your cooperation.

Mr. McMILLAN. Thank you very much, Mr. Chairman.

Mr. BROWN. Now we are very pleased and honored to have the distinguished senior Senator from Wisconsin, the Honorable William Proxmire, who is the Senate's prime sponsor for the legislation we have before us, H.R. 3818, who is well-known over many years for his interest in environmental and public interest matters. We feel distinctly honored that you would take the time to come over, Senator, and address us on this issue.

**STATEMENT OF HON. WILLIAM PROXMIRE, A U.S. SENATOR
FROM THE STATE OF WISCONSIN**

Senator PROXMIRE. Thank you very much, Mr. Chairman. I appreciate that I am glad to see Congressman Gunderson who does such a fine job representing the Third District in our State. I will say that now. Next year I may not be saying it because he is up for reelection. Thank you for inviting me to testify on the the subject of the Federal Insecticide, Fungicide, and Rodenticide Reform Act of 1983. S. 1774, and H.R. 3818.

Changes are needed in the existing pesticides law. H.R. 3818 and S. 1774 address these problems constructively.

Our State, I think, is about as typical as you can find. We have 2 percent of the land, 2 percent of the population, 2 percent of the water, pay 2 percent of the taxes. We don't get 2 percent of the Federal revenues in our State, but we are working on it, not very well, but we are working on it. We also, I think, have 2 percent of the damage from pesticides.

Four examples from Wisconsin show why we should promptly enact this legislation. Since 1980, the Wisconsin Public Intervenor's Office, the Department of Natural Resources, and the Department of Agriculture, Trade and Consumer Protection have investigated the effects of pesticide contamination on Wisconsin's ground water. Their findings are alarming.

For example, 1982 DNR studies of the central sands region near Stevens Point turned up some seven pesticides in ground water wells, and I have them listed here in the statement which you have before you. Even worse, concentrations of the first four pesticides exceeded EPA national drinking water guidelines.

Aldo Leopold, the great Wisconsin naturalist, made this same central sands area famous in his book, *Sand County Almanac*. He focused on the unique and abundant plants and wildlife such as the lupine and the sand hill crane which filled this region of hills, rivers, and marshes before it became the agricultural center it is today. According to Leopold, even when times were worst and the inhabitants were offered a chance to leave for more prosperous areas, they resisted, unable to abandon the natural beauty that surrounded them.

Unfortunately, this scenic area is also highly susceptible to pesticide damage because of its high water table, sandy soils, extensive irrigation use, and cold climate.

Fortunately, sections of H.R. 3818 and S. 1774 integrate ground water protection into FIFRA for the first time, requiring the EPA Administrator to consider potential harm to ground water whenever he makes any decision to classify pesticides for either general

or restricted use. While these sections do not entirely eliminate the pesticide threat to ground water, they do provide some measure of protection.

Rather than wait for Federal action, Wisconsin is trying to enact its own ground water protection program. A bill currently before the Wisconsin Legislature would establish ground water standards for various substances including pesticides. However, this legislation is largely dependent on Federal data for its standard setting, data largely absent due to past failures to collect it by EPA. S. 1774 and H.R. 3818 require production of adequate data on all registered pesticides and would make Wisconsin's job much easier.

Another serious pesticide problem affecting Wisconsin is the harm caused by accidental spraying of people, livestock, and the general environment by crop dusters. Recently, 20 dairy farmers in the Ripon area allegedly had fields of corn destroyed because of pesticide drift from the spraying of nearby fields with the deadly defoliant paraquat. The paraquat was sprayed as a condition of the PIK program which requires weed suppression for fields taken out of production.

S. 1774 and H.R. 3818 would ease this problem by creating a new section of FIFRA which would require the EPA Administrator, within 1 year, to promulgate new regulations to guard against exposure to pesticide drift from aerial spraying. Standards contained in these regulations will enable both EPA and the States to prosecute pesticide misuse more effectively.

The September 25, 1983 edition of NBC's news show, "First Camera," reported on alleged cases of poisoning by the now-banned pesticide ethylene dibromide or EDB. According to "First Camera" reporters, grain mill workers in Superior, Wis. were severely injured by EDB exposure at work, and some may have died.

EPA had evidence that EDB was a serious health hazard for almost a decade yet failed to act, claiming insufficient data. Under H.R. 3818 and S. 1774, this could not happen. The bills require comprehensive testing of all pesticides, both old and new. They set out specific timetables for reregistering pesticides such as EDB which were registered before 1972 in order to bring their regulation into line with the latest scientific knowledge.

Finally, dioxin contamination caused the Department of Natural Resources to close 47 miles of the Wisconsin River to commercial fishing. While the agency has yet to prove the exact source of the dioxin, pesticides used by the paper industry are among the prime suspects.

Dioxins are also implicated in cases of deformed cormorants and terns found in epidemic numbers in Green Bay.

Both H.R. 3818 and S. 1774 strengthen the environmental regulations in the existing pesticides law by tightening the standards contained in section 3 of the act.

To sum up, H.R. 3818 and S. 1774 improve ground water protection, protect against health and environmental hazards of aerial spraying, require comprehensive testing of all potential pesticide health hazards and tighten environmental standards which protect fish and wildlife.

Mr. Chairman, these are just a few examples of pesticide problems which affect my State. Wisconsin is not unique. We are no

more contaminated than other parts of the country, but I do think we are more careful to test than many.

However, these cases do point out the need to act and to act fast to rewrite a law which obviously is not working. H.R. 3818 and S. 1774 would correct the weaknesses in existing law and give us a strong pesticides program for the first time.

I might say that, just today, we received from the Intervenor's office in the Department of Justice a copy of a letter that was written a long time ago—written in December of last year—but which sets forth 25 or 30 examples of individual residents of Wisconsin in the area that have been hit and hurt, their health damaged and certainly their crop and wildlife adversely affected by pesticides. I would appreciate it if that could be made part of your record.

Mr. BROWN. Without objection, that will be made part of the record.

[The prepared statement of Senator Proxmire appears at the conclusion of the hearing.]

[Material to be supplied follows:]



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Bronson C. La Follette
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F. Joseph Senebrenner, Jr.
Deputy Attorney General

December 22, 1982

The Honorable Mary Lou Munts, Chairperson
Special Committee on Groundwater Management
124 West, State Capitol
Madison, Wisconsin 53702

Dear Mary Lou:

Enclosed is a paper entitled "Fearing And Coping With Groundwater Contamination From Pesticide Usage In The Central Sands," written by Anne Cramer Hong, a clinical intern with the Office of Wisconsin Public Intervenor this fall. The paper presents a very personal view of how groundwater contamination from pesticides actually affects the lives of citizens in the Central Sands Region. I feel that this is an important document that should be shared with members of the Special Committee on Groundwater Management and its Subcommittee members.

Note that the identities of three individuals have not been disclosed upon their request. While other individuals did not expressly request anonymity, some were hesitant to talk to Anne in light of publicity already generated. Therefore, I request those receiving this paper, including the press, to exercise discretion in respecting the privacy of those whose stories appear in this report.

I hope you will find this paper helpful in considering the issues and proposals currently before the Committee.

Sincerely yours,

Thomas J. Dawson
Wisconsin Public Intervenor

TJD:ACH:ead

Enclosure

cc: Ann Cramer Hong w/enclosure
Technical Advisory Subcommittee Members w/enclosure
Compensation Subcommittee Members w/enclosure
Special Groundwater Committee Members w/enclosure

FEARING AND COPING WITH GROUNDWATER CONTAMINATION
FROM PESTICIDE USAGE IN THE CENTRAL SANDS

by
Anne Cramer Hong
Public Intervenor Clinical Intern

December 22, 1982

"... a test of ghoulish proportions is inadvertently underway right now in central sands, the test animals are not laboratory rats, but the men and women and children who drink water here."

Michael Goc, Fox River Patriot, November, 1982.

I. OVERVIEW

This report contains the accounts of thirty-nine individuals I spoke with on the telephone regarding the contamination of groundwater by pesticides. Twenty-one of the individuals owned wells which had been contaminated by Aldicarb or other pesticides. The others feared that their wells might be contaminated and desired that their wells be tested or retested.

The phone calls I made were to a select group of people--primarily to those known to have contaminated wells and to individuals who had expressed their concerns at meetings of various citizens organizations about the quality of the groundwater. This report is not aimed at reviewing the merits of each individual's comments or to give a rounded view of the attitudes of all citizens in the Central Sands Region. Time and resources do not allow it. Rather, it seeks to detail the concerns and problems of those who are or consider themselves to be victims of groundwater contamination from the usage of pesticides.

From my calls, it became evident that the current testing of wells by the Wisconsin Department of Natural Resources (DNR) for pesticide contamination is clearly inadequate to meet the needs of citizens who want to know whether their water is fit to drink or use. Although DNR has tested and retested numerous wells for the presence of aldicarb in homes in and around Mosinee, people living in other towns feel grossly neglected. They want to know what is in their well water but they are unable to afford the testing costs themselves. Aldicarb, of course, is not the only source of contamination. The results of thirteen well tests done at the United States Environmental Protection Agency (EPA) laboratory in Beltsville, Maryland showed that disulfotol (a systematic insecticide), carbofuran (a corn rootworm insecticide), and dinoseb (a lethal potato vine killer) were also contaminating many of those wells. The people I spoke with want

the State of Wisconsin to institute a comprehensive well testing program so anyone could get their well water tested.

The primary theme running through all the conversations I had is that people are completely frustrated by the lack of information on how harmful pesticide contamination is. Everyone is confused by the use of SNARLS and safety factors. When they hear that the State does not know what level is dangerous to anyone's health, they are appalled. The citizens look to the State to obtain this information and to get it quickly. They do not want to be patient when they are drinking a potentially dangerous substance daily. Frequently, many human and animal health problems are blamed on the water. In addition to meeting citizens well testing and water supply needs, the State must be able to determine if these allegations are true, false or undeterminable.

People with contaminated wells feel helpless. They don't know what to do. If they dig deeper they may or may not get better water. Filters and distillers are not known to be reasonably effective yet. Obtaining bottled water or water from other sources is an enormous hassle. Only if people believe that their water is truly bad for them, or if they are worried about very young children, will they conscientiously drink water only from sources other than their own wells. Many just hope that their water will clean up by itself.

The entire situation could be a time bomb. Some individuals want an immediate ban on the use of the pesticides contaminating their wells. Others are complacent and are willing to wait until more information is obtained. Meanwhile, they keep drinking the water, and the growers keep using the pesticides. People ask, "How much will it take before Wisconsin really assesses the quality of its groundwater and acts to protect it?" Groundwater management and protection must be a top priority for State action. My phone conversations emphasize the necessity for immediate State action.

The attitudes of the people I spoke with toward the potato and bean growers range from neutral understanding of their positions to complete rage at their power and callousness. As for Union Carbide, the owners of wells contaminated by aldicarb would like the company to do more than just pay for bottled water. Yet, this amount of effort has passified most of the Mosinee residents. A compensation program for owners of contaminated wells is viewed most favorably. Everyone wants to be able to turn to the State for help and get relief. Everyone wants the State to get itself better informed as well, so information and help can be obtained without frustration.

II. SUMMARY OF CONCERNS, PROBLEMS AND OPINIONS

The following list summarizes the variety of individual concerns, problems and beliefs expressed to me during the telephone interviews.

1. People believe the water they drink is likely to be contaminated when they live near fields on which pesticides are intensively applied.

2. People blame the water they drink for causing or promoting minor and serious health problems in themselves or their children.

3. People fear that either themselves or their children will suffer serious health problems in the future as a result of drinking contaminated water today.

4. Purchasing and hauling water from other sources is an enormous burden on any family.

5. People want a means to make their own well water safe to drink again and are tempted by advertisements of distiller or filtering devices that claim to purify contaminated water.

6. Digging a deeper well is an enormous expense for most families and often is one they cannot afford.

7. People fear that digging a deeper well may not be a solution because continued intensive pesticide usage may only contaminate the deeper sources of groundwater, too.

8. An owner of property with contaminated well water fears that the value of his property is greatly decreased thereby. A home with contaminated well water may not even be marketable today.

9. People fear that the health of dairy cattle will decline from both drinking contaminated water and eating feed crops grown with contaminated water.

10. People blame the sickness of their cattle and other domestic animals on the possibility that their well water is contaminated.

11. People fear that milk products from the Central Sands will no longer be safe for human consumption.

12. A business providing or preparing food for the public may not be able to remain in business if it becomes known that its well is or has been contaminated by pesticides.

13. People believe that wildlife have been greatly harmed by the use of pesticides and the presence of pesticides in water supplies.

14. People fear that "organic" gardens are no longer possible in areas where pesticides are used because of the inevitable usage of groundwater in watering these gardens.

15. People fear that soon town water supplies will be contaminated by pesticides, too.

16. People want to have their well water tested to find out if it is considered safe or unsafe.

17. One isolated well test which shows little or no presence of pesticides is not sufficient to allay a person's fears as to the quality of their water tomorrow.

18. No one knows who to believe regarding how safe or unsafe their water is--the information existing today is too contradictory and confusing for a person to base an intelligent decision regarding the safety of drinking his or her well water.

19. People believe that the manufacturers, applicators and growers should be held responsible for groundwater contamination by pesticides and should reimburse those who are affected by this contamination.

20. Those exposed to aerial drift from the spraying of pesticides strongly fear that they will have adverse long-term health effects from such exposure.

21. The application of pesticides around a person's home greatly interferes with a person's use and enjoyment of his or her property.

22. People say Central Sands residents believe their health and well being are being sacrificed in deference to agricultural concerns--in other words, agriculture has been given a license to pollute.

23. People say Central Sands residents are reluctant to speak out against intensive pesticide usage because they fear retaliation from the growers or others who sit on bank and town boards which consider the terms of their loans, mortgages, and set local policy.

24. People feel helpless when they believe that their water may be contaminated and their health threatened by the practices of the potato growers and pesticide applicators.

25. Currently there is no place to turn within the State government to get satisfactory information or help with regard to any pesticide problem.

26. People say most Central Sands residents would not trust the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) to regulate pesticide usage and adequately protect their interests in having a source of clean, uncontaminated groundwater.

27. People fear that the groundwater could be permanently contaminated by current agricultural practices.

28. People say the discontinuation of the intensive use of pesticides is needed before any peace of mind will be brought to those living beside potato and bean fields.

III. PERSONAL ACCOUNTS

The following are summaries of the telephone interviews that I had with various well owners in the Central Sands Region of Wisconsin during the months of October and November, 1982. These interviews were not followed up so they represent the attitudes of the individuals at the moment I spoke with them. Often this was soon after they had learned that their own wells were contaminated or that many other wells in the area were also contaminated.

One caveat: I have included the names and addresses of each person contacted, except for three who expressed their wish to remain anonymous. In most cases, the individuals are very supportive of the efforts of the Office of Wisconsin Public Intervenor, but many would not want their names released to the press without checking with them first. I believe many people would not have been as honest and open in talking to me if they had thought that their situation would be widely publicized as a result of our conversation. I do not want to jeopardize this goodwill. While some of the individuals may not have any qualms about their name being used in a press story, others would be terribly upset. Some people made this expressly clear to me. Those names have been omitted. Under these circumstances, I ask that any use of this report be with discretion in order to respect the interests of these individuals who have generously shared their time and thoughts with me.

A. Owners of Wells Tested By EPA.

1. Mr. & Mrs. Thomas Dalton, 293 Rangeline Road, Mosinee 54455.

The Dalton's have a particularly difficult situation. They had their home listed with 20th

Century before the results of their well test came through. They need to sell their house in order to build a new, larger home on forty acres they own nearby. The house they own now is not big enough to accommodate their growing family. With a contaminated well, they feel their home may be unmarketable.

Their home is surrounded by potato fields. They have considered digging a deeper well, but they suspect and fear that soon the groundwater at lower depths will be contaminated, too. They have been told that a water filter might be a possibility, but so far the information on the effectiveness of any filtering process is sketchy.

The Dalton's don't know what to do. They have two daughters, ages ten and three, and a six-month old baby boy born with minor birth defects. They get town water for the baby and the girls. They have been cooking with and drinking their well water though, because they do not have access to enough town water to cover their entire water consumption.

The Daltons have been in contact with the DNR District-Rhineland and have considered possible legal actions. However, they live on a tight budget. Primarily, they just hope to sell their home in order to begin building a new one.

2. Anonymous.

The A's own a dairy farm and fear harm to their business if it becomes known that their well was found to be contaminated with pesticides. Before the test results were known, the A's drilled a new well at considerable cost.

The A's are very concerned about the groundwater, and feel that this concern pervades the neighborhood. There are lots of shallow wells in the area. Mr. A stated that there should be some continuous monitoring system so people can find out how safe or unsafe their well water is. He wants to have his new well tested periodically, but he wants it tested accurately. He feels that to have his well tested on his own is prohibitively expensive, and he questions the accuracy of private testing.

Mr. A has had great difficulty with his herd of cattle. The milk is okay, but their behavior

has changed. They are lame and have had swollen knees. The cows won't breed back either. The veterinarian and people from the university have been taking various tests, but cannot pinpoint the problem. Mr. A believes these problems may be related to groundwater contamination.

3. Ed Roehl, Route 2, Hancock 54943.

Mr. Roehl's well was found to have the following levels of pesticides in it:

Aldicarb	6ppb	(SNARL 10)
Disulfoton	14ppb	(SNARL 1)
Dinoseb	50ppb	(SNARL 13)

The sample was taken last spring, so Mr. Roehl has no idea how bad his water is today.

Mr. Roehl has a dairy farm with a small herd of cows. Last winter, nine calves were aborted. The State veterinarians were called in, but no one could figure out why Mr. Roehl lost so many calves. Finally, they suggested that he have his water tested. The water test did not solve the mystery though. The county agent told Mr. Roehl that dinoseb generally affects the nervous system and should not have been the cause of the abortions. Since last winter, the rest of Mr. Roehl's herd has been healthy, so he is baffled by the situation.

The Roehl's have been buying water for their own consumption, but their animals still drink their well water. The price of the water they buy is 80 cents per gallon. They have considered digging a deeper well, but DNR has told them that this might not help them. The Roehl's have asked to have another sample from their well taken and tested, but no one from DNR has come to do this.

4. Mrs. James Felix, 271 Rangeline Road, Mosinee 54455.

The Felix's well was found to be contaminated by two pesticides - one being aldicarb. The count did not seem alarming to them. They do not think the problem is that bad, but do want to know if it is. They buy some water, but have generally been drinking from their well, which is 44' deep. They have two sons who do not live at home. The report of their well being contaminated has not been a hardship because they continue to drink and use their water.

5. Don Wirz, N334 Wirz Lane, Antigo 54409.

At first, I was unable to contact Mr. Wirz, and his wife did not feel that she should talk with me. Mr. Wirz evidently is a potato farmer. A daughter I talked with volunteered that everyone was still drinking the water.

Later, I did speak with Mr. Wirz. He stated that since he is a member of the Wisconsin Vegetable and Potato Growers Association, he felt that he could not make a statement to me. He did say that his organization is very concerned with the problem, and it is an issue which has taken up all of their meetings.

6. Lyle Gear, Skelly Truck Stop, Post Office Box 155, Plainfield 54966.

Mr. Gear feels DNR has done him a great injustice in the manner they have handled the well testing and reporting. He stated that he volunteered to have his well tested. When it was found to be contaminated, DNR insisted that he drill a new well, 275' deep, because of his business. In having to meet State standards on well casings, etc., the total cost of this new well was in the order of \$10,000. (I was told to contact Butch Sherill, who holds the lease to the station, or Rex Grunewald, who owns the motel, if I wanted to know the exact cost of the new well.) Mr. Gear feels that his business has been greatly damaged by the publicity given to his contaminated well. He stated that the restaurant business was still down by 10%.

Mr. Gear's original well was 90' deep. His truck stop is completely surrounded by fields sprayed all summer long with pesticides. Mr. Gear is concerned about the use of pesticides and groundwater contamination. He questions the standards used, however. To him, a "SNARL" is just an arbitrary figure without any real meaning. Mr. Gear's experience with DNR leads him to conclude that the Department of Agriculture would be the only agency to govern a pesticide groundwater program reasonably.

Mr. Gear is interested in what our office is doing and would like to receive any communication we mail out regarding pesticide legislation, especially compensation to well owners.

7. University Experimental Station, Hancock 54943.

Actually, I was unable to contact the station. The papers have mentioned that the University is performing its own tests for pesticide contamination, because it does not feel DNR's testing was accurate.

8. Other people with well water contaminated by several pesticides, whom I could not contact were:
- a. Leonard Pagel, W10962 County Trunk G, Antigo 54409.
 - b. Ernest Rozmowski, Route 1, Box 71, Batley 54440. (potato grower).
 - c. Knick Knitter, Route 1, Box 221, Wittenberg 54499. (Supposedly very angry about press release of names).

B. Mosinee Owners of Wells Contaminated with Aldicarb.*

1. Ron & Shirley Weyer, 173 Rangeline Road, Mosinee 54455.

The Weyer's well was found to have 5 ppb of aldicarb in it. The Weyer's are concerned, but feel their water is still safe. They have not arranged to have their well retested. In general, they are not in favor of pesticide usage.

2. Gary and Cheryl Hilman, 233 Rangeline Road.

The Hilman's well also was found to have 5 ppb of aldicarb in it. The house next door to them contained no aldicarb, while houses two doors down, in either direction, were found to have 14 ppb and 68 ppb.

The Hilman's have a six year old daughter, and they care for foster children. Often they are caring for babies. The Hilman's have brought in outside water when they have babies with them who are on formula.

* Note: Many of these individuals were tired about talking about pesticides and were not receptive to more questions.

Fred Bailee of the DNR took second samples of the Hilman's well water on November 5, 1982. Two samples will be tested by the State and one by Union Carbide. The results should be back in a month.

3. Leonard Maly, 193 Rangeline Road, Mosinee 54455.

Mr. Maly's well contains 16 ppb of aldicarb in it. He is still drinking the water, and his well will be retested at the end of November. He has not considered digging a deeper well because DNR has stated that that will not necessarily alleviate the problem.

Mr. Maly is concerned about the problem, but he feels that the limits and standards are so uncertain that there is not much to react to yet. He is sitting tight to see what happens and hopes that DNR's information will improve. He feels that most people in the area are concerned, but not upset.

4. Delmar Brod, 536 Dalton Drive, Mosinee 54455.

Mr. Brod's well contains 38 ppb aldicarb and also nitrates. (He has tested his well for nitrates for several years.) Mr. Brod and his wife are buying water for their personal consumption, and it costs 75 cents per gallon. They are an older couple and have a dog as a pet. So far, they have noticed no adverse health effects from their previous consumption of their well water.

The Brod's have been very pleased with DNR's handling of the situation. Mr. Brod said DNR has been by several times and has taken a second sample of their water. The Brod's are saving their receipts for buying bottled water because Union Carbide has said it will pick up the tab for it.

Mr. Brod mentioned that the city is thinking about extending its pipes out to his area since the extension would only be one-fourth mile, or so. Mr. Brod's daughter, Mrs. Gary Kuklinski, who lives next door to him, had her well tested at 4 ppb aldicarb, while a house across the street was around 40 ppb. Mr. Brod mentioned that the rains have been particularly bad this year, so there is likely to have been more field runoff.

Mr. Brod mentioned to me that a company from Wisconsin Rapids, called "Rain Soft," had been around the neighborhood trying to sell distillation or purification equipment for a price of \$1,800. Later, in conversations, with Mr. Brod's daughter, and his wife, I learned that Mr. Brod had actually been talked into signing a contract to buy the equipment. He was under the impression that: 1) Union Carbide would reimburse him for it; and 2) the equipment would be effective. Mrs. Brod called DNR and discovered that neither impression was correct. She cancelled the sales contract. I have asked Jim Enright at DATCP to investigate the company and its equipment.

Mr. Brod is glad that there is concern with the pesticide problem. He states that we cannot let our water get contaminated. He is also a little concerned about the pesticide spraying. He has noticed much fewer birds in the area, and he cited a couple spray mishaps of past summers.

5. Anonymous.

The B's have had their well tested twice. The first test was taken in the spring of this year and over 20 ppb of aldicarb were found in it. A second test taken later this summer found over 30 ppb. The B's feel that this level of contamination is very dangerous despite Union Carbide's assurances to the contrary. DNR has told them that they will test the well for other pesticides in the future.

The B's have children all under the age of five. The B's have hauled water since June of this year from wherever they can get it--relatives, neighbors, or the place where Mr. B works. It is a constant hassle. Union Carbide has offered to pay for the water they obtain, but the B's have not really kept records of their consumption.

The B's hope that the city will extend their water system to the area in which they live. They want to sell their house and fear that it will be impossible now. The potato fields are directly behind their house.

They would like to see aldicarb banned completely. The groundwater is too precious to allow any contamination. The B's attended the

aldicarb hearings and were frustrated by everyone's sidestepping language regarding what actually will be done about aldicarb. They are very concerned about the issue, but do not want their names in the press.

6. Marcus Klawitter, 618 Dalton Drive, Mosinee 54455.

Mr. Klawitter has a 41' deep well which was found to have 14 ppb of aldicarb in it. He has been hauling water from the home of a relative. Union Carbide has offered to pay him for his mileage.

Mr. Klawitter hopes DNR will be able to retest his well soon, and maybe the second test will show that his water is okay. He feels that DNR is doing all it can within its budget. He suggests that more funding should be appropriated for well testing.

7. Mrs. Michael Wirsbinski, 207 Rangeline Road, Mosinee 54455.

Their well contained 12 ppb of aldicarb. They are drinking the water, although they did haul water for awhile when their son was first born this year. They have detected no problems from drinking the water thus far. They live in a residential area surrounded by fields. DNR has said that it will test their well periodically.

8. Mrs. Glenn Wendt, 688 Primrose Lane, Mosinee 54455.

The Wendt's well, which is 42' deep, contained 12 ppb of aldicarb. Mrs. Wendt is hauling water from her mother's house in town. She is not receiving any compensation from Union Carbide. The well was retested last week.

The Wendt's have four children, ages five to fifteen, and two dogs. Before they began to haul water, Mrs. Wendt noticed that she was getting feverish and dizzy periodically. Since they have stopped drinking their water she no longer has had any such problems.

Mrs. Wendt wants the State to act so that contamination of the groundwater will be completely avoided. She feels DNR has been responding well to their problem, but feels that more should be done.

9. Gary Sirvio, 531 Dalton Drive, Mosinee 54455.

The Sirvio's had their well tested six weeks ago and it contained .04 ppm. They are still using their water, but they buy water for their baby. Union Carbide is reimbursing them for this expense. Mr. Sirvio wants his well retested, but DNR has not recontacted him yet.

Mr. Sirvio mentioned that someone had come around advertising a water filter for about \$1,500. He did not know anything specific about it. Mr. Sirvio recommends that aldicarb be banned before things get worse.

10. Mrs. Clarence Niziolek, 646 Dalton Drive, Mosinee 54455.

Their well has been found to have 14 ppb aldicarb in it. Mrs. Niziolek has stated that she has not had problems with the water so they continue to drink it. She does not like or want to drink contaminated water, but it is an enormous hassle for her to obtain other water for a family of five and a dog. She has three young children--two who are under the age of four. She worries about making formula for her three month old out of the water they have, but so far her children seem quite healthy. If Union Carbide makes a more firm commitment to pay for bottled water, she would buy it. They cannot afford the expense otherwise.

DNR has retested their well, and the family is anxious to hear the results. They would like to be compensated for drilling a deeper well if that would provide them with good water.

11. Dennis Wogernese, 687 Primrose Lane, Mosinee 54455.

The Wogernese family lives right beside the potato fields and their well has been found to have more than 30 ppb of aldicarb in it in two different tests taken this year. The results from a third test have not yet been received. Mr. Wogernese would like to put a new well in, but he does not have the money for it. Although he believes that his family should not be drinking their water, they are. Mr. Wogernese states that they have been lax about it, because it is too much hassle to obtain other water. They are

waiting to act until they receive the results of the third well test.

Mr. Wogernese had nothing but good words for DNR in its efforts to help the Mosinee people. He felt that the DNR meeting on November 4, 1982, for the Mosinee people was very helpful, although everyone was left with questions and it was difficult to know whose word to take. It sounded like John Barkin's appearance was particularly confusing since he sounded like an independent university researcher. Most people did not know that he had done studies funded by Union Carbide. Mr. Wogernese found this out a day later from Fred Bailee. I suggested that Mr. Wogernese call Byron Shaw at UW-Stevens Point.

Mr. Wogernese said that Union Carbide had offered to pay for any bottled water purchased, but was unwilling to accept the bill for new wells or for the installation of carbon filters. Union Carbide did admit at the meeting, though, that it had installed a carbon filter for one family in Portage County who wished to sell their home.

Mr. Wogernese would like to see all use of aldicarb banned in their area in order to give the groundwater a chance to rid itself of pesticide contamination. He is from a farm background, so he personally holds no ill feelings toward the potato farmers. He does not want to put them out of business, but he does not want to give them a license to pollute either. He hopes that the State will act on this problem quickly and will come up with some answers. He questions the wisdom of leaving DATCP in charge of protecting the groundwater from pesticide contamination.

12. Mrs. Gary Ruklinski, 692 Dalton Drive, Mosinee 54455.

Their home is about one-fourth mile southeast of the potato fields and their well has 4 ppb of aldicarb, although their neighbors on all sides of them have much higher levels. They are still drinking their water because they feel that this is a safe level. DNR has retested their well and the results should be back in a month. They have been very satisfied with DNR's handling of the situation and the explanations given to them by Bob Martini.

13. Mrs. Darryl Baumann, 185 Beans Eddy Road, Mosinee 54455.

The Baumann's live near the river and their well tested to have 12 ppb of aldicarb. They are buying bottled water and saving the receipts for reimbursement from Union Carbide. They are not too frightened by the situation, but think that better alternatives to dangerous pesticides should be developed.

C. Other Owners Of Wells Contaminated By Aldicarb.

1. Earl Wetmore, Hancock 54943.

On October 12, 1982, Mr. Wetmore received a letter from DNR informing him that his well was tested to contain 12 ppb of aldicarb. The letter encouraged him to use water from another source or to buy bottled water. He was advised that he could contact Union Carbide for reimbursement.

Mr. Wetmore is an elderly man and does not know what to do. He would like to have his well retested. Otherwise, the contamination of his well water is a difficult thing for him to understand or deal with.

2. A growing number of wells have been found to be contaminated by aldicarb with concentrations above the SMARL of 10. The names of the owners of these wells have been protected by both DNR and the Portage County Department of Health and Human Services. I did not try to obtain these names.

D. Possible Mixed Nitrate-Pesticide Well Contaminations.

1. Bob Marshall, Silvermint Lounge, Plainfield 54966.

DNR has tested the well water at the Lounge for nitrates since 1973. In both 1980 and 1981, high levels of nitrates were found. The well is in close proximity to the well replaced by Lyle Gear at the Plainfield Skelly Truck Stop, so pesticide contamination is also suspected. However, Marshall's well was not tested for pesticides.

DNR required the Lounge to replace its well. The first well had been 50' deep, and the second is 175' deep. The new well cost \$4,500 (in

order to comply with all requirements for casings, etc.).

Mr. Marshall hopes that two things will be addressed by legislation. First, better knowledge is needed. More money should be devoted to finding out the health effects of nitrates and pesticides. Mr. Marshall feels that DNR was just experimenting at his expense. He wants to know what the health dangers are. Secondly, a compensation program is essential if the public is expected to react wisely when groundwater contamination is discovered.

2. James Treder, 5716 Highway 10, Stevens Point 54481.

Mr. Treder has been a dairy farmer for twenty-five years. In 1972, he had a healthy herd of cows. In 1973, he began to have troubles. Calves began to get sick and die. Their legs would swell, they would have sore feet, tight skin and tended to over eat. Over the next five years, he lost 150 head of cattle. Many seemed to have a mastitis-type disease before they died. Others had tumors, too. With the aid of State veterinarians, Treder tried everything to cure them. Meanwhile, with milk production down, he became deeper and deeper into debt.

Treder's children were sick much of this time, too. At one time they were all admitted into the hospital for pneumonia and were kept in an oxygen tent.

Finally, Treder had his well tested for nitrates and a level of 700 ppm was recorded. Another test sent to Perkins Laboratory in Iowa found 110 ppm. Even so, in 1978, no one at the State level seemed alarmed about this level of nitrates.

At a cost of \$4,000, Treder put in a new well. His first well had been 57' deep, while his second well went through a layer of granite and was 160' deep. Since Treder has switched water supplies his cattle and his children have regained their health.

Treder is one-fourth mile away from potato fields, and he feels that this is the source of his nitrate problem. He also has been concerned with pesticide contamination. He has lost alfalfa

crops from overspray incidents and feels that pesticides are grossly overused. In December of 1979, his well was included in a study prepared by Mary C. Christie for the University of Wisconsin. This study suggested that Treder's well may also have been contaminated by gunthion, a general insecticide. His well has never been more formally tested for pesticide contamination, though.

Treder may shortly have his farm mortgages foreclosed. He is very bitter and feels that the State has to be better informed and must act immediately to further prevent well contamination. He feels strongly that even the lowest concentration levels of nitrates or pesticides endanger our health. Treder blames his problems partially on the neglect of the State to educate itself about the possible harmful affects from the excessive use and runoff of pesticides and fertilizer.

3. Barbara Weade and Michael Goc, Route 2, Friendship 54934.

Ms. Weade is quite concerned about the use of pesticides and fertilizers in Adams County. A neighbor has a summer place near her home, and the well on that property has had nitrate counts in the 20's for the past year. Ms. Weade's well has had only low levels of nitrates. She wonders if there is a correlation between pesticide and nitrate contamination. Ms. Weade lives near an area where aldicarb use has not been restricted. She has a young baby and would like to have her well tested to find out if it is really safe to drink.

Ms. Weade feels that people in Adams County are less aware of the threat of water contamination from pesticides, and those who are aware of it are afraid to talk.

E. People Living In Fear Of Groundwater Contamination From Pesticides.

1. Donna Steckelberg, Route 2, Box 219, Hancock 54943.

The Steckelberg's live across the road from potato fields and one-fourth mile from Ed Roehl, whose well was found to be contaminated by

dinoseb, disulfoton and aldicarb. Their well has not been tested for pesticides. It is only 25' deep though, and they fear that it is very susceptible to contamination because the fields near them are sprayed heavily with insecticides and vine killer. The planes often fly over their house. There has been some drift from those fields in the past.

The Steckelberg's DO NOT DRINK their well water. They have a two year old daughter and fear for the health of their family. They either get water in Stevens Point or buy bottled water at a cost of 79 cents a gallon. The Steckelberg's would like to see the use of contaminating pesticides banned, and they want their well tested.

2. Roy Gau, Route 1, Box 116, Hancock 54943.

Mr. Gau lives next to the Hancock Agricultural Experimental Station where a well was found to be contaminated by several pesticides. Mr. Gau is afraid that his water is contaminated, too. He wants to have his well tested to know for sure. Until this can be done, he is trying to obtain groundwater maps of the area to find out where his water comes from, and then decide whether or not it is likely to be contaminated by pesticide runoff from the surrounding potato fields.

3. Mary & Joe Hovel, Route 2, Westfield 53964.

The Hovel's live within a wooded area that is surrounded by potato fields. Their well is at the top of a hill and does not reach groundwater until a depth of 225'. They worry about the quality of the groundwater in their area and would like to have their well tested.

The planes and helicopters, which spray the fields with pesticides in their area, do fly over their house. Aerial drift, is a constant concern. This summer the Hovel's were oversprayed while working on a house they had contracted to build. They both had skin irritations afterwards. They reported the incident, but they had a tough time finding anyone to report it too.

4. Mrs. Richard Millard, 4247 Highway 173, Nekoosa 54457.

Mrs. Millard wants their well tested. The Millard's property borders potato fields on the northwest and the sprayers fly over their house all summer long on their way to the fields. Their well is 15' deep. Below their well is bedrock. They have no access to town water should anything happen to their well.

The Millard's have three young children, horses, dogs and chickens. They are very concerned about the overuse of pesticides and contamination of the groundwater. The entire family suddenly got severe sore throats recently which makes them question the quality of the water they drink.

5. Mrs. Tim Van Meter, Route 1, Nekoosa 54457.

Mrs. Van Meter's chief desire is to get their well tested. Their well is 60' deep. She is pregnant at this time and has young children. She fears for her family's health.

This year the fields across from their home were planted in corn so they were not bothered by pesticide spraying. She stated that people down the road lost their garden from overspraying earlier this year, however. Last year, Mrs. Van Meter was oversprayed. Two months later she had a miscarriage (the only one that she has ever had in the course of several pregnancies). She suspects that there is a connection. She did not see a doctor after the overspray incident because she did not know that she was pregnant at the time.

6. Olive Genz, W3840 County Trunk G, Nekoosa 54457.

The Genzes are very conservation-minded and have been fighting to get cooperation from the sprayers in their area. They own a good size tract of land in the center of extensive agribusiness. They have a large organic garden and an extensive tree farm. They participate in the "Acres For Wildlife" program which provides seedlings to citizens who will plant them. They have planted thousands of red pines and also 1,000 poplar trees which cannot tolerate pesticides. Their goal is to maintain their property as a nature conservancy. Contamination of the

groundwater beneath their property would frustrate this goal.

The Genzes are strongly opposed to excessive pesticide use, especially in such sandy soil. They feel that excessive pesticide usage must be stopped before everything is contaminated. Their well is 35' deep. Although it is not near fields which are sprayed, they worry about contamination. There are a number of high capacity wells in the area which strongly influence groundwater movement. They have had their well tested for nitrates, but not for aldicarb.

The Genzes had a verified overspray three years ago and, since then, they have been able to get the sprayers to respect their property lines. Mrs. Genz was very upset with DATCP and does not think pesticide regulation should be left to it alone.

7. Harold & Lola Neumann, 4390 Highway 173, Nekoosa 54457.

The Neumann's home is surrounded by four fields. The grower who plants these fields has been in business for five years. In the past three or four years, the fields have been planted in potatoes, beans and peas. Pesticides have been sprayed over the crops at least once a week and, more frequently, at harvest time. The sprayers have been better this year in staying away from their property.

The Neumann's well is 12' deep, and it has been tested for both aldicarb and nitrates in February of this year. The aldicarb testing proved to be negative while the nitrate level was 12 ppm. Mrs. Neumann recommends that a zero level of aldicarb and nitrate concentration in the groundwater be sought.

8. Anonymous.

Mrs. C does not want to get involved in the pesticide controversy, but she does want to have her well tested for pesticide contamination. Her name is currently on a waiting list for aldicarb testing at the DNR. She said she and her husband were told that they could not even pay to get their well tested. The C's live next to fields which are sprayed more than once a week with

pesticides. They have a well which meets groundwater at a depth of less than 30 feet. They live on one acre of land, have pets, and raise domestic animals. The C's have an infant. Mrs. C stated that she did not drink the well water while she was pregnant.

9. Mary & John Buchanan, Route 1, Box 294, Oxford 53952 (also interviewed in an article dated December 3, 1980 in the Friendship Reporter).

Mrs. Buchanan is completely disgusted by the overuse of pesticides where she lives. She and her husband (and also many of their neighbors who are also retired) bought their property quite a number of years ago hoping that it would be a good place to retire. Then, in 1962, the potato growers began to move in and take over. The irrigation farms surrounding the area plants potatoes, green beans, corn and winter rye. Various fields are sprayed as often as three times a week.

The Buchanan's believe that their water is contaminated. Beginning in 1972, they tried to raise chinchillas as a business. They had a lot of trouble getting them to breed. Of the animals that did get pregnant, stillborn or deformed births occurred. Also, the animals would gorge themselves and drop dead. At this time, they spent \$4,000 to put in a new well that was 150' deep. This did not help the chinchillas. In 1981, citizens who were worried about the groundwater in that area held a meeting with a number of representatives from DATCP and DESS. I could not understand the circumstances, but soon after this meeting, a Dr. Bosman, from DATCP, called the Buchanan's and told them not to drink their water. Since then, the Buchanan's have been hauling in as much water as possible from a location five miles away. The Buchanan's well was tested for aldicarb later in the year by DNR. The test was negative but that did not allay their fears. They would like to have their well tested again for any and all pesticides, and they would like to be compensated if it is contaminated. In their minds, no level of pesticides in the groundwater is acceptable.

Mr. Buchanan is seventy years old. Both he and his wife connect a number of their personal health problems, and those of their friends, to the probable presence of pesticides in their

water. Mrs. Buchanan's eyes get bloodshot when she drinks the water, and she stated that neighbors relate colds, high blood pressure and light-headedness to the water. Most everyone tries to haul water from other sources, and drinking different water generally cures the health problems mentioned above. The Buchanan's are angered by the doctors in the area and their unwillingness to connect health problems to pesticide usage.

The Buchanan's garden has been blighted from the spraying of pesticides. They also have had trouble canning many vegetables, although they seem to have better success when they buy bottled water for the canning process. They state that all the jackrabbits have slowly died off in their area. They feel strongly that people have died from inhaling the pesticide spray. Specifically, they mention a guy who died in a mysterious tractor accident in their area. Although there is no proof, pesticides were being sprayed at the time, so they claim that the accident occurred because the driver was overcome with fumes.

The Buchanan's feel strongly that the pesticide spraying must be stopped, especially since they do not believe that it is needed. They do not like the idea of having pesticide rules enforced by DATCP because the potato growers have too much power there. They have petitioned DNR and their State Representatives over the years and are frustrated and very pessimistic about the process of trying to get the State to help them.

10. Clarence Schulist, Custer 54423.

Mr. Schulist is a dairy farmer who has been frequently hassled by pesticide drift. The sprayers in his area spray frequently and seem to disregard windy conditions. There are 800 acres of potatoes surrounding his land. Mr. Schulist stated he would never eat a potato from these fields due to the overuse of pesticides and fertilizer.

Mr. Schulist has a dairy herd, chickens and plants 30 acres, or so, in alfalfa. He tried to grow potatoes on 20 acres of his land but it was too expensive to irrigate. He has lost a number of alfalfa crops from pesticide drift. The crop will suddenly turn yellow where it borders the potato fields. He regrets not photographing these

incidents. He uses some pesticides on the alfalfa, but his use is quite limited. Mr. Schulist has gotten sick from being exposed to pesticide drift on windy days. He has six or seven cows sick with mastitis, and he wonders about the connection of this to either the spraying, or to the groundwater, or to the alfalfa he feeds them that may have excess pesticides on it from the drift. Mr. Schulist stated that his brother lost eight cows by feeding them corn which had Temik (aldicarb) on it. He mentioned that another neighbor had two cows die and did receive a settlement from the owner of the potato fields.

Mr. Schulist has a 16' deep well and worries about the overuse of pesticides in general. He fears that this excessiveness may ruin agriculture in the area.

11. Carrie Reaves, Jackson Avenue, Plover 54467.

Mrs. Reaves lives on the edge of a subdivision, a half block away from fields planted in potatoes and beans. These fields are sprayed frequently by both planes and helicopters. The Reaves' have a shallow well. It has been tested for aldicarb, and the test was negative. The Reaves' have two children, ages thirteen and eighteen, and are concerned about the future quality of the groundwater where they live.

12. Tom Cordy, Plover 54467.

Tom Cordy, who lives 1-1/2 miles outside of Plover, feels that his living situation cannot be much better than living at Three Mile Island. He is surrounded by fields which are sprayed intensively. He was oversprayed this summer on a day when the winds were heavy. He is still ill from this incident: having high blood pressure, excess water retention and blurred vision. He reported it and had urine and blood samples taken. He states that the sprayers do not follow the Ag 29 rules, and he does not understand why the State does not enforce these rules (i.e. the rules regarding spraying conditions and notice of application, etc.). He stated that the planes do not spray only in early morning and at night as required, but often they will spray during heavy winds in the middle of the day. Mr. Cordy had wanted to subdivide his property, but he feels that it is worth little when it is besieged by pesticide spraying. He states that there are very

few animals left in the area and no bees. Many of the birds in the area have maggots. He stated that the paint was lifted off of his brother-in-law's car when it was hit by aerial drift of pesticides after it sat in the sun for a few hours.

Mr. Cordy's well is between 20' and 30' deep. He has it checked every three months for nitrates and would like to have it tested for pesticide contamination. He feels that the State must do something before people begin to drop dead all over the place.

Mr. Cordy wants Ag 29 to be enforced and also to have a ban imposed on any spraying within a five- (or at least three-) mile radius of the town of Plover. He wants a pesticide hotline established to give people access to help for pesticide emergencies. Right now it is nearly impossible to get help or to report an overspray incident. He feels that the potato growers are being allowed to ruin everyone else's life!! He still has had no response from DATCP regarding the overspray incident that continues to plague him with illness.

13. Mary Jane Worvella, Plover 54467.

Mrs. Worvella lives a half block from the fields and sees the spraying all summer long. She has several young children, the eldest being ten. She is very concerned with the affects of heavy pesticide usage on everyone's health. Their house receives town water and she questions the continued quality of this water since the town is surrounded by farms which spray heavily.

14. Mrs. Otis Cornwell (Mary), Plainfield 54966.

The Cornwell's own 40 acres which are surrounded by potato and bean fields on all sides. These fields are sprayed all summer long, two or three times a week. They fear for the quality of the groundwater. They would like to have something done about the excessive pesticide spraying.

Their well has been tested and high levels of nitrates were found. While their daughter was pregnant and while her child was an infant, the Cornwell's bought water whenever their daughter and grandchild visited. Their well is 30' deep.

15. Arvella Joost, Almond 54909.

Mrs. Joost lives by herself on property bordered by three farms planted primarily in beans and potatoes. She blames the health problems that she and many of her friends have had on pesticide spraying. She states that she has been sick every summer from pesticide drift. When the spraying stops, she feels better. This summer, however, the nearest fields were planted in corn, and she has been well all summer long. She has a large, organic garden which has fared much better this summer, too.

She is very concerned about the excessive use of pesticides, especially the use of vine killer (Dinitro). She has a 72' deep well which is four years old. She has it tested for nitrates because of the fertilizer runoff from the nearby fields. She would like to have it tested for pesticides, too.

Mr. BROWN. Thank you very much for that very constructive testimony, Senator. I am particularly pleased that you made reference to Aldo Leopold who has been one of my great mentors in the field of ecology. It gives me an opportunity to recommend to all members of the subcommittee that they read Sand County Almanac. I am sure it will improve their legislative abilities.

Mr. ROBERTS, do you have any questions?

Mr. ROBERTS. Yes, Mr. Chairman. I would like to welcome the Senator to the subcommittee. Hopefully, in the not too distant past, I was privileged to be a staff member to the former Senator from Kansas, Frank Carlson, whom I know is a good friend of yours. I remember 1 weekend we were driving to Baltimore and left from the Capitol, and we darn near ran over you during in your daily workout. At any rate, I think we—

Senator PROXMIRE. You ought to try again. Maybe next time you can make it. [Laughter.]

Mr. ROBERTS. We were not aiming at you, Senator.

Senator PROXMIRE. No, Frank was a marvelous man. It was a long time ago that he served in the Senate, but he served with great distinction. Everybody loved him.

Mr. ROBERTS. That was prior to the days of Bob Dole running the country, and Frank is in good health and back home in Concordia, Kans., and I am sure sends his personal best wishes to you.

I have a letter here that is addressed to our chairman but also to all the members of the subcommittee. I will ask you the same question that I asked the primary House sponsor of H.R. 3818. It was a letter signed by 33 major farm organizations, more or less oriented toward the producer end of the business, along with a letter from the Farm Bureau and several from the State departments of agriculture throughout the country. They have some concern about H.R. 3818. I mention this in the spirit of compromise, not in regard to outright opposition to the bill. However, I must say to you that, on behalf of agriculture and these farm organizations, there are some of us who have some real concerns. I was wondering if you could respond to that. Have you had that kind of input in the State of Wisconsin?

Senator PROXMIRE. I welcome that kind of suggestion. I think it is very constructive. As you know, and as the man sitting on your left knows even better than I do, we have 25 percent of all the dairy farms in the country in Wisconsin. We are a great farming State, and we are concerned about farming.

I have had some complaints from farmers who are concerned about the effects of pesticides on the cows and on dairying generally. We haven't any validated cases of cows actually dying from pesticide abuse, but we have so many indications and so many complaints, that I think that there is a real prospect that this may happen.

I would agree wholeheartedly. I think it is very constructive to consider the views of the farmers, too, and we certainly will in the Senate also. As you know, this is legislation which we are very hopeful that the Senate will act on.

Mr. ROBERTS. I appreciate that. Thank you, Mr. Chairman.

Mr. BROWN. Mr. Volkmer.

Mr. VOLKMER. Senator, in reviewing H.R. 3818, I am wondering if you have had any idea whether or not we may have to increase the budget of EPA, the pesticide operations portion of it. Even without it, I agree we should, but do you think that some of the reregistration requirements, data requirements, would necessitate increases in personnel and budget?

Senator PROXMIRE. I am very reluctant, as you may know—I am the author of the Golden Fleece Award, and I do my best to try to oppose any kind of spending increase anywhere at any time and in any circumstances—but it seems to me that you can make a very strong case that it may be necessary and it may be economical, for the Government as well as for the people involved, to make sure that we provide adequate funds so that we protect human health and animal health. That is a good investment and be seen as that. So I would be very sympathetic.

Mr. VOLKMER. Thank you very much.

Mr. BROWN. Mr. Gunderson.

Mr. GUNDERSON. Thank you, Mr. Chairman.

Let me officially welcome you, Senator, to our subcommittee. I think I can say publicly to everyone in this room that we are probably living examples that you can be of different political parties and have not only mutual respect for but work very closely with each other. I have found that the Senator and his office have been very cooperative. You know I appreciate that. Mr. Chairman, even once in a while we get the Senator to vote with us, and we are especially appreciative of that.

I have a couple questions, Senator. First of all, you have identified the alticarb issue in Wisconsin and I recognize that there have been hearings in the Central Sands area on the issue. Could you, for the record, indicate how you feel H.R. 3818 would change what has occurred in that particular area and what the process would be?

Senator PROXMIRE. I think I indicated in my statement about all that I can tell you here as to how both these bills would improve it. As I say, to summarize it, it would improve ground water protection, protect against health and environmental hazards of aerial spraying, require comprehensive testing of all potential pesticide health hazards and tighten environmental standards protecting fish and wildlife. That would affect, it seems to me, all the pesticides. Did you have something more specific in mind, Congressman?

Mr. GUNDERSON. Perhaps there is authority under your proposal that does not exist under present statute, for example, that would allow us to put some kind of regulations on the use of alticarbs that are not in existence today. I am trying to relate those hearings that occurred in the Central Sands area on this issue with your legislation. Obviously, it is here. The question is how do we regulate it at this point to better protect against the problems that we are having in ground water in Wisconsin?

Senator PROXMIRE. I think that the principal action that is most important here as far as our State is concerned—this would not apply to some other States, but it would apply to our State—is to simply require the EPA to provide the data that we need and on which we can act. Our State has indicated that we are going to pos-

sibly pass our own ground water protection legislation. If the EPA does its job, we will do ours. That is not satisfactory in other parts of the country where, for one reason or another, the State legislatures may not be able to take that kind of action. However, the heart of my proposal is to require EPA to provide the data that we need.

Mr. GUNDERSON. One of the concerns that some of us have on the bill is how it affects a State's ability to be involved in the pesticide management area. I think you would agree that in Wisconsin we tend to pride ourselves in a good and aggressive Department of Natural Resources and a good Department of Agriculture. One of the things that this bill would do is to put some limitations on their ability to offer emergency exemptions or to be involved in the labeling process at all. Obviously, when you sponsor or cosponsor a bill, it does not mean that you agree with every item in the bill. I would be interested to know what your perspective might be on these limitations of State activity?

Senator PROXMIRE. Well, we haven't even started hearings, unfortunately, in the Senate. I hope we can begin them next year. We are negotiating with Chairman Helms to provide that. However, I would be delighted to entertain any suggestions from farm groups or other groups to suggest exemptions. I think that that would improve the legislation if they would make suggestions that they can document the situation to protect the opportunities for farmers to use pesticides properly while also protecting the environment.

Mr. GUNDERSON. I guess that is what I would like to follow up with you. The problem with EPA in certain areas is their inaction presents problems for States whether it be in pest management or in other areas. Do we need to preserve the authority for States to operate with standards in those areas where EPA has not operated in the past?

Senator PROXMIRE. That may well be. Frankly, I have not had any indications from State authorities in Wisconsin, and, as you say, we are very aggressive and sensitive about it. They are concerned about this, and they are aware of this legislation. They have not indicated to me, from our State, maybe they have indicated to you, that they are concerned that they be inhibited from taking the kind of action that would be constructive.

I think you are absolutely right that we should be careful. If this legislation is finally enacted into law, we need to give the States as much reasonable flexibility as possible.

Mr. GUNDERSON. Just as a point of clarification, I am not aware that the State or any of its agencies have taken a position pro or con on your bill. Have any of the agencies in Wisconsin taken a position for or against the bill?

Senator PROXMIRE. As I say, I am basing some of my testimony today on information from the Department of Justice in Wisconsin. That is the Public Intervenor's office; they have sent me this information indicating they do have this problem, and the problems which they have been able to determine, ascertain from a number of Wisconsin citizens, would be met from the provisions of this legislation.

Mr. GUNDERSON. Fine. Thank you very much. Thank you Mr. Chairman.

Mr. BROWN. Mr. Olin.

Mr. OLIN. No questions.

Mr. BROWN. Mr. Penny.

Mr. PENNY. No questions.

Mr. BROWN. Mr. Evans.

Mr. EVANS of Iowa. Senator, you have focused on a couple of areas of particular interest to me in your statement: the ground water problems and the monitoring problem. As you indicate, H.R. 3818 deals with that. It describes a very substantially beefed up EPA monitoring authority which I think would be absolutely vital in the national interest in areas of all kinds, that is, air, water, soil, and so forth. What I want to ask you about is a matter of strategy. We are asking EPA and we are asking the Department of Agriculture to go through this legislation on a section-by-section basis to give us their analysis and their position on it. In the event that we should find some agreement on the desirability of moving ahead with certain portions of this legislation, do you consider that it might be a feasible action to take even in connection with the annual authorization for EPA which we pass under any circumstances?

Senator PROXMIRE. Yes; I was thinking of that on the way over here. We expect a 1-year extension of the current law to go through the Senate some time in the next 2 days. When that happens, we have worked it out so that Senator Leahy who is the ranking member of the appropriate subcommittee of the Agriculture Committee in the Senate will have a colloquy with Senator Helms, and Senator Helms has agreed to have hearings on this legislation in the next year, next spring, and we are going to do our very best to move it along.

Mr. BROWN. As you know, with the 1-year authorization that you have before you and which the House has passed, we did include the fairly noncontroversial authorization. I think it is a permanent or a multiyear authorization for the Science Advisory Panel. It was my thinking that conceivably we might include other relatively noncontroversial improvements in FIFRA with that authorizing legislation either this year or next year. This year's bill may be too far gone to make any further changes, but we will be considering next year's in the spring of 1984 and might be able to act on something at that time.

Senator PROXMIRE. I agree, Mr. Chairman. Any progress we can make on this. I do not think it is necessary to hold back the whole situation until we can be sure that we can get the entire package we want. If we can get parts of it, I would enthusiastically support that.

Mr. BROWN. Thank you very much. I have no further questions, Senator. Again, we express our appreciation to you for giving us the benefit of your interest and concern on this issue.

Senator PROXMIRE. Thank you very, very much, Mr. Chairman.

Mr. BROWN. Our last witness this afternoon is Mr. Bruce Hawley representing the American Farm Bureau Federation. Mr. Hawley, we are very pleased to have you here speaking on behalf of that great organization, the American Farm Bureau.

**STATEMENT OF BRUCE HAWLEY, ASSISTANT DIRECTOR,
WASHINGTON OFFICE, AMERICAN FARM BUREAU FEDERATION**

Mr. HAWLEY. Thank you, Mr. Chairman. Good afternoon. We appreciate your willingness to accommodate our appearance today in recognition of our inability to be here at your last hearing. Thank you. I would like to submit our statement for the record and simply make a couple of brief comments if I might.

Mr. BROWN. Without objection, the statement will be included in full.

Mr. HAWLEY. The issues that have been discussed before the subcommittee today, the issues of quality of data submitted in support of product, the quality of review of that data, the adequacy of enforcement actions and the timeliness of registration and other regulatory actions obviously are kind of the key as to why H.R. 3818 was introduced and the focus of much of the controversy that has surrounded FIFRA for a number of years.

It seems that there are two ways of resolving those questions, either by legislating specific solutions to each of those problems or by relying on the integrity of the EPA and the integrity of the leadership at that Agency. We were most enthused this morning by the comments made by Mr. Ruckelshaus, by his personal integrity and the integrity of leadership that we are sure he will bring to EPA to assure that the problems that have plagued us all with EPA and its pesticide programs may be addressed in a timely and responsible fashion in the near future. That simply suggests that we urge the subcommittee to support Mr. Ruckelshaus' effort and give him adequate time to address the problems prior to consideration of any legislation.

Thank you.

[The prepared statement of Mr. Hawley appears at the conclusion of the hearing.]

Mr. BROWN. Thank you, Mr. Hawley. That is very succinct, but do not run away. There might be a question or two.

Mr. Hawley, we have raised this point with previous witnesses: how much time do you think Mr. Ruckelshaus ought to have?

Mr. HAWLEY. Recognizing that it has taken a dozen years to build some of the problems that he is dealing with, it is going to take more than a day to solve them. Certainly, things like the *Monsanto* case are on their own timeclock, and outside of his ability to control. I would fully expect that by next spring he should have demonstrated either a will and an ability to make substantial steps on these problems or not. I would encourage that we wait at least that long to identify whether there is a substantial movement toward resolution of the problems.

Mr. BROWN. Are you sufficiently familiar with the history of the use and regulation of pesticides to be aware of the fact that the Department of Agriculture used to administer this program, and it no longer administers it because it kept saying give us time and we'll do a better job and they never did? We would hate to have that happen again with an agency created to do this job in a way that protected the total public interest as well as the welfare of agriculture in this country.

However, I think we do want to be reasonable, and I find nothing unreasonable in Mr. Ruckelshaus's request for the necessary amount of time. I just want us to keep in mind that if that request is made merely for the purpose of delaying any action, it probably is going to be counterproductive in the long run.

Mr. HAWLEY. I concur entirely. There are two major differences between when the Department of Agriculture operated this program and today's program under EPA that will result in a difference of attention to the issues. When USDA ran the program, pesticides was not a popular public issue. There was not public scrutiny or public pressure for the kinds of sound pesticide regulatory programs that we have today.

Second, the Department of Agriculture never had the benefit of such intensive congressional oversight as EPA has received. Certainly, that congressional attention has got to cause the Agency to move in a responsible and timely fashion.

Mr. BROWN. If I were to ask you, in reviewing H.R. 3818, to give us a section-by-section analysis and point out what sections, if any, you found to have some merit, what you were neutral on, and what you opposed, would that be an unreasonable request or do you think that the things that are bad in it make it desirable for you to oppose the whole thing as without redeeming virtue?

Mr. HAWLEY. I might not phrase it quite that harshly. However, we have taken the position that such problems as may exist over at EPA should be addressed by prestanding legislation focused specifically at those problems. This legislation addresses many of the problems that have been discussed here today as public concerns, and, additionally, addresses many special interest concerns which may very well be outside of the proper parameters of a legislative package at this or perhaps at any time.

We would prefer, if it was possible, pending Mr. Ruckelshaus's efforts over there to identify any shortfalls that the committee feels are sufficiently important to require legislation, to fashion legislation dealing specifically with those problems.

Mr. BROWN. Thank you.

Mr. Roberts.

Mr. ROBERTS. I have no questions, Mr. Chairman.

Mr. BROWN. Mr. Penny.

Mr. PENNY. Mr. Chairman, I have had an opportunity to talk with Mr. Hawley about this bill, and I am sure there will be other opportunities, so I won't ask any questions here.

Mr. BROWN. Mr. Volkmer.

Mr. VOLKMER. I have no questions. I just wanted to congratulate them for their analysis, and I am sure it will be very helpful when we get to working on the bill.

Mr. BROWN. Mr. Olin.

Mr. OLIN. Mr. Chairman, I just wanted to ask one question. It relates to what the chairman was talking with you about.

We are all very impressed with Mr. Ruckelshaus and will want to give him all reasonable time to get on the job and get staffed and decide what he wants to do. On the other hand, there is quite a bit of pressing need in a couple of areas to take some action. Would you see any, from your point of view, any objection to our pushing him to work with us on those areas that we think we can make

some progress on in terms of lining up our thinking and developing a legislative approach even before we have the *Monsanto* answer and before he is totally on top of everything?

Mr. HAWLEY. I not only see no problems with it, but would suggest that under the Constitution, it is very much the Congress responsibility in the exercise of their oversight function to do exactly that. The laws should be written to provide clear guidance to the Agency, and we would argue that FIFRA has been fashioned in that fashion. However, the Agency needs constantly to be reminded of what Congress had in mind when that law was passed, and that can be done through the oversight function or through less formal cooperation with the Administrator.

Mr. OLIN. In this case, of course, one of the big issues is which things need to be dealt with legislatively and which things can be handled administratively. Of course, in order to arrive at those conclusions, we have to get a pretty good idea of what this administration wants to do and pass some judgment on what the effect is going to be. That process, I think, I would be very comfortable with, and I take it you have no real quarrel with that either.

Mr. HAWLEY. We encourage it.

Mr. OLIN. Thank you. Thank you very much, Mr. Chairman.

Mr. BROWN. Thank you very much, Mr. Hawley.

That concludes our witnesses for this afternoon.

I would like to discuss briefly with the members of the subcommittee our program for insuring action on this. We have tentatively scheduled several days' business meetings for the purpose of considering whether we wish to proceed with the markup on this legislation. We are having a meeting tomorrow afternoon for that purpose.

Mr. VOLKMER. Mr. Chairman.

Mr. BROWN. Yes, Mr. Volkmer.

Mr. VOLKMER. I would just like to say as I said earlier, I think when we were discussing this with Mr. Ruckelshaus, I am not trying to beg off because of too much ignorance, but I just haven't had the time to review, especially, H.R. 3818 and all its implications and study it as I would like to do. I know that its proponents would probably like to push on right away, but I would like to have some opportunity to review it and to review a large stack of information that I have on pros and cons on it before we actually get into markup on it.

Mr. BROWN. Well, it had been the Chair's expectation that the subcommittee members would find a number of problems with this legislation but that there might also be some meritorious portions which they would like to move on. It seems clear to the Chair that, after consultation with a substantial majority of the subcommittee members, that in view of the fact that we have not gotten a section by section analysis from EPA or the Department of Agriculture which would indicate what portions would be generally acceptable to move, that it would be difficult for us to take any action on that matter. I am not able or desirous to force the subcommittee to take action which they do not desire to take.

However, I am of the view that we ought to realistically evaluate the problem that we have before us. We have been told by Senator Proxmire and from other sources that the Senate may act on the 1-

year extension in the next few days. All that does is it means that by next May 15 we have got to come up with another 1-year extension, along with any changes that we propose to make in connection with that one-year extension. That is going to require some intensive work if we plan to include even those portions, we'll say, of H.R. 3818 which there is general agreement on. It has been my strategy, not very well concealed, by maintaining pressure on the agencies and others to get them to move forward in their analysis of the steps that they were going to take to correct some of these problems. We would like to maintain that pressure, very honestly, and I think that members of the subcommittee would generally like to see the Agency move expeditiously in those areas where they can, correcting problems administratively where they can and recommending legislative change where they cannot do it administratively.

There are certain things that I think we probably ought to do over the next 2 or 3 months. I would like the opportunity to discuss these with the members of the subcommittee, informally, at a meeting tomorrow if you are willing to take an hour to do that. With the understanding that we will not proceed to a markup of the bill but will proceed to a discussion of other actions that we can take, I would like to continue with the plans to meet tomorrow at 2 o'clock. Is there any objection to that from any of the members?

Mr. VOLKMER. Mr. Chairman.

Mr. BROWN. Yes, Mr. Volkmer.

Mr. VOLKMER. I have one other thing in regard to H.R. 3254 that I would appreciate it if the staff could solicit comments from FDA as to whether it would have any effect on their being able to pick up residues on vegetables stuffs, fresh fruit and vegetable stuffs coming in.

Mr. BROWN. All right.

Mr. VOLKMER. We had the comments of USDA's Mr. McMillan on the meat. I would like to have the same—FDA testified earlier on our oversight when we had, I don't believe it was specifically directed toward the legislation. I would like to ask comments in writing if at all possible.

Mr. BROWN. We will request the staff to solicit such comments in writing.

Mr. ROBERTS. Mr. Chairman.

Mr. BROWN. Mr. Roberts.

Mr. ROBERTS. If I might be permitted to make an observation in regard the H.R. 3254, I think that Mr. McMillan's testimony indicated some concern that I have, and others have, with regard to the protectionist nature of this bill. Perhaps that is being a little strong in terms of describing what could happen in this regard, but I have some feeling about this. I think before we would ever proceed with markup on that legislation that we need to hear from the State Department and Office of the Special Trade Representative on this particular bill. I would hope that we could do that prior to proceeding on that legislation.

Mr. BROWN. That will be a subject—the question of what additional information the subcommittee members would like to have we can discuss at our meeting tomorrow and at least take the necessary steps to get that kind of information into the record.

One additional point: I have submissions from the National Cattlemens Association with regard to this legislation, from the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, from the Food and Beverage Trade Department of the AFL-CIO, and from the Migrant Legal Action Program, all of which will be made a part of the record at the conclusion of today's hearings.

If there is no further business to come before the subcommittee, we will be adjourned until 2 o'clock tomorrow afternoon.

[Whereupon, at 3:55 p.m., the subcommittee adjourned, to reconvene at 2 p.m. on Thursday, November 3, 1983.]

[Material submitted for inclusion in the record follows:]

TESTIMONY BY CONGRESSMAN CEC HEFTEL

SUBCOMMITTEE ON DEPARTMENT OPERATIONS,
RESEARCH, AND FOREIGN OPERATIONS

H.R. 3254, THE PESTICIDE IMPORT AND EXPORT ACT OF 1983

NOVEMBER 2, 1983

Mr. Chairman, I am pleased to be here to testify on legislation I introduced, H.R. 3254, the Pesticide Import and Export Act of 1983. I am grateful to you and the Committee for moving ahead so quickly on the consideration of legislation to strengthen our domestic and international pesticide laws.

The safe use of pesticides both in the U.S. and abroad is an issue of increasing concern to us all. Our growing sophistication in a range of analytic sciences is allowing us to develop new and highly potent chemical products. These pesticides are being used more widely each year and overseas markets are growing the most rapidly. Unfortunately, even here in the United States our understanding of the potential long-term, environmental and human health effects of these products is not keeping pace with our ability to create such new products. We have gone to great lengths to regulate the use of pesticides on the food we grow, yet are apparently still unable to anticipate where problems will arise. A case in point is the groundwater contamination that has occurred in both our states, which I will discuss later.

The situation overseas is much more troublesome. Although there is little accurate information available about pesticide use patterns abroad -- and this is one of the problems addressed in my bill -- there is ample reason to be deeply concerned that pesticide use and misuse in certain developing nations poses a far greater risk to man and the environment than here in the U.S. Mr. Chairman, my bill is an attempt to foster more effective exchange of information on pesticides in the international exchange of information and technology with other countries so that the benefits of modern pest control chemicals can be enjoyed more widely without undue risks.

This past year this subcommittee held several hearings on the operation of government pesticide control programs. You explored the issues affecting exports of pesticides from the U.S. and how our programs to detect illegal pesticide residues on imported foods are working. Witnesses at your hearings presented evidence and judgments from personal experience that the incidence and severity of health and environmental problems worldwide from improper pesticide use is rising rapidly in some countries. It is hardly surprising that there are tragic side-effects of pesticide use in developing nations in light of the sophisticated measures that are needed to safely use the products. My bill is based on the conviction that the U.S. has the ability and an obligation to move effectively to assist foreign countries in evaluating how pesticides can be used more safely. I believe strongly that the very modest resources such endeavors may take can be amply

justified on moral and ethical grounds, as sound business practice to preserve the good reputation of the "made in U.S.A." label and in terms of protecting public health in America. We should keep in mind that the U.S. is the world's leading importer of food.

We know from documentation presented in the General Accounting Office Report "Better Regulation of Pesticide Exports and Pesticide Residues in Imported Food is Essential" and other reports, that our government agencies responsible for monitoring pesticide residues on imported foods are not able to adequately monitor all such residues. Your hearings brought forth evidence that little real progress has been made in our monitoring programs, especially those covering imported foods. FDA Compliance Reports show that illegal pesticide residues are often found regularly on commodities. Furthermore data obtained from the Food and Drug Administration by your subcommittee shows that it is common for the FDA to detect the residues of six different pesticides on each sample of imported foods. Indeed, Mr. Chairman, many samples of fresh fruits and vegetables are found to contain residues of a dozen or more pesticides -- many of them extremely toxic compounds. What this suggests is a rather trigger happy philosophy in some countries where fields are treated repeatedly with a number of different products.

As I already pointed out, the United States is the world's largest importer of food. Our consumers demand that our fresh food products, whether imported or domestic, be perfect and blemish-free. Such quality can often only be achieved through the heavy use of fertilizers and pesticides, particularly in Third World countries where the soil has been often been overworked for centuries and where the climate usually never gets cold enough to kill bugs.

The Environmental Protection Agency knows with some precision which pesticides are used in the United States. Pesticide labels are designed to control what crops pesticides are used on, in what quantities, and under what conditions. The system is far from perfect, yet it does provide government agencies with some guidance on what pesticide residues should be looked for when monitoring domestic food. Yet, we have very little useful information on pesticide use abroad. The findings of routine testing on imported foods shows that many more products are routinely used overseas, including many previously cancelled or suspended in the U.S. We also know that these products are often used at greater concentrations per acre with less care and precision. These points all suggest that we should exercise even more diligence in monitoring imported foods. Yet we do far less with almost no accurate information to guide us. There is no reason to allow this situation to persist. This pesticide testing double-standard is a two-edged sword and a sharp one at that. Consumers are threatened by unsafe residues and our farmers are forced to compete with overseas growers able to apply a far more potent arsenal of chemical pest control agents. This situation is unfair, unwarranted, and unwise. We need to do something about it, Mr. Chairman, and my bill is a good step in this direction.

The Congress should act now to amend those portions of our pesticide laws that have caused this double-standard. H.R. 3254 was

drafted in response to the inadequacies in our current pesticide laws documented most recently in your hearings. I believe it is a responsible bill, and that it would in fact help address the real problems. I am not satisfied, in all honesty, that the bill is dramatic enough in light of the seriousness of the problem -- but I think it is all that is politically feasible at this time, and would constitute at least a good start.

The thrust of this bill is to increase the content and transfer of information about pesticides which are exported from our country--their ultimate destination and the food crops to which they will be applied. The underlying philosophy behind the bill is that the best way to prevent a pesticide hazard is to at least know of its existence. The EPA would be notified on a more regular and comprehensive basis of the nature, extent, destination, and intended uses of exported pesticides. This bill would also strengthen the export notification procedures governing the export of pesticides from the U.S. A modified notification process would be triggered for pesticides that are banned, pesticides that are available only for restricted use in the U.S. because of acute mammalian toxicity, and pesticides that have never been registered for use in our country. The expanded notification process would require importing nations to acknowledge their understanding of the dangers of such pesticides, and includes several new measures designed to heighten awareness in the importing nation regarding how to use and dispose of these pesticide products. H.R. 3254 would also direct our government agencies which are involved in pesticide regulation to share information among themselves, and would further authorize the EPA and other agencies to work on a cooperative basis with other nations who request assistance from the U.S. in evaluating pesticide safety issues.

The provisions in H.R. 3254 would not hamper American export of pesticides or make it prohibitively difficult for American companies to compete in the worldwide pesticide market. Rather, the provisions in my bill will assure more equal safety standards throughout the world -- a change which will in fact directly benefit U.S. pesticide companies which are already well-ahead of most competitors in voluntary programs and policies promoting safe pesticide use in developing nations. My bill is a step toward assuring that we are not undermining the safety precautions and costs imposed on American farmers by tolerating a pesticide residue double-standard for food produced here and abroad. Our farmers are required to use safer, often more expensive pesticides, and it is unfair that they should have to compete on such an inequitable basis especially when legitimate human health concerns are also involved.

Mr. Chairman, as pesticide use around the world continues to increase, so do the dangers involved. Evidence accumulated over the past few years documents the problems and potential for pesticide abuse abroad. There have already been several major disasters overseas involving pesticide misuse, and I hope we act on this matter so that our own citizens can rest assured that they are not also paying a heavy price for inadequate protection. If we act now to institutionalize the types of information and environmental protection technology exchange called for by this bill, we might head off a

serious crisis in future years in which pesticide laws and regulations become major deterrents to free trade and overseas commercial development.

On this note, Mr. Chairman, I would also like to comment briefly on H.R. 3818, the FIFRA Reform Act.

I am a cosponsor of this bill and I strongly support the provisions in it. As a result of a pesticide mishap that occurred in my state of Hawaii involving pesticide contamination of groundwater, I am particularly supportive of subsection 4(b) of the bill, which requires that all decisions pertaining to the classification of a pesticide take into consideration the potential contamination of groundwater. Water is a valuable and increasingly scarce resource in Hawaii and nationwide, and we must prevent at all costs the contamination of groundwater. The EDB and DBCP contaminations we have experienced in Hawaii and in other states can be traced directly to insufficient attention to and regulation of secondary effects of pesticides. We are now paying for this failure in my state by closing down wells, trucking in water to schools, and investing in expensive aeration devices to make the water pure again. I hope, Mr. Chairman, that in recognition of the dangers posed by the inadequacies of current law, the committee will move quickly to address this growing problem.

Again, Mr. Chairman, I applaud you and our colleagues on the committee for your interest in this serious matter, and I urge your favorable action on the pesticide legislation before us today.

STATEMENT OF SENATOR WILLIAM PROXMIRE

MR. CHAIRMAN:

Thank you for inviting me here today to testify on the subject of the Federal Insecticide, Fungicide and Rodenticide Reform Act (FIFRA) of 1983, S. 1774 and H.R. 3818. Changes are needed in the existing pesticides law. H.R. 3818 and S. 1774 address these problems constructively. Four examples from Wisconsin show why we should promptly enact this legislation.

1) Since 1980, the Wisconsin Public Intervenor's Office, the Department of Natural Resources, and the Department of Agriculture, Trade and Consumer Protection have investigated the effects of pesticide contamination on Wisconsin's groundwater. Their findings are alarming.

For example, 1982 DNR studies of the central sands region near Stevens Point turned up the following pesticides in groundwater wells:

Aldicarb (Temik)
Disulfoton (Disyston)
Carbofuran (Furadan)
Dinoseb (Dinitro)
Sencor (Metribuzin)
Atrazine (Aatrex)
Linuron (Lorex)

Even worse, concentrations of the first four pesticides exceeded EPA national drinking water guidelines.

Aldo Leopold, the great Wisconsin naturalist, made this same central sands area famous in his book, Sand County Almanac. He focused on the unique and abundant plants and wildlife such as the lupine and the sand hill crane which filled this region of hills, rivers and marshes before it became the agricultural center it is today. According to Leopold, even when times were worst and the inhabitants were offered a chance to leave for more prosperous areas, they resisted -- unable to abandon the natural beauty that surrounded them.

Unfortunately, this scenic area is also highly susceptible to pesticide damage because of its high water table, sandy soils, extensive irrigation use and cold climate.

Fortunately, sections of H.R. 3818 and S. 1774 integrate groundwater protection into FIFRA for the first time, requiring the EPA Administrator to consider potential harm to groundwater whenever he makes any decision to classify pesticides for either general or restricted use. While these sections do not entirely eliminate the pesticide threat to groundwater they do provide at least some measure of protection.

Rather than wait for federal action, Wisconsin is trying to enact its own groundwater protection program. A bill currently before the Wisconsin Legislature would establish groundwater standards for various substances including pesticides. However, this legislation is largely dependent on federal data for its standard setting, data largely absent due to past failures to collect it by EPA. S. 1774 and H.R. 3813 require production of adequate data on all registered pesticides and would make Wisconsin's job easier.

2) Another serious pesticide problem affecting Wisconsin is the harm caused by accidental spraying of people, livestock and the general environment by crop dusters. Recently 20 dairy farmers in the Ripon area allegedly had fields of corn destroyed because of pesticide drift from the spraying of nearby fields with the deadly defoliant paraquat. The paraquat was sprayed as a condition of the PIK program which requires weed suppression for fields taken out of production.

S. 1774 and H.R. 3818 would ease this problem by creating a new section of FIFRA which would require the EPA Administrator, within one year, to promulgate new regulations to guard against exposure to pesticide drift from aerial spraying. Standards contained in these regulations will enable both EPA and the states to prosecute pesticide misuse more effectively.

3) The September 25, 1983, edition of the NBC news show, "First Camera," reported on alleged cases of poisoning by the now-banned pesticide ethylene dibromide or EDB. According to "First Camera" reporters, grain mill workers in Superior, Wisconsin were severely injured by EDB exposure at work, and some may have died.

EPA had evidence that EDB was a serious health hazard for almost a decade yet failed to act, claiming insufficient data. Under H.R. 3818 and S. 1774, this could not happen. The bills require comprehensive testing of all pesticides, both old and new. They set out specific timetables for reregistering pesticides such as EDB which were registered before 1972 in order to bring their regulation into line with the latest scientific knowledge.

4) Dioxin contamination caused the Department of Natural Resources to close 47 miles of the Wisconsin River to commercial fishing. While the Agency has yet to prove the exact source of the dioxin, pesticides used by the paper industry are among the prime suspects.

Dioxins are also implicated in cases of deformed cormorants and terns found in epidemic numbers in Green Bay.

Both H.R. 3818 and S. 1774 strengthen the environmental regulations in the existing pesticides law by tightening the standards contained in Section 3 of the Act.

In summary, H.R. 3818 and S. 1774 improve groundwater protection, protect against health and environmental hazards of aerial spraying, require comprehensive testing of all potential pesticide health hazards and tighten environmental standards which protect fish and wildlife.

Mr. Chairman, these are just a few examples of pesticide problems which affect my state. Wisconsin is not unique. We are no more contaminated than other parts of the country -- just more careful to test.

However, these cases do point out the need to act and to act fast to rewrite a law which obviously is not working. H.R. 3818 and S. 1774 would correct the weaknesses in existing law and give us a strong pesticides program for the first time.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
BEFORE THE SUBCOMMITTEE ON DEPARTMENT OPERATIONS,
RESEARCH AND FOREIGN AGRICULTURE
HOUSE COMMITTEE ON AGRICULTURE
WITH REGARD TO H.R. 3818,
A BILL TO AMEND FIFRA

Presented by
Bruce Hawley, Assistant Director, Washington Office

November 2, 1983

Farm Bureau appreciates the opportunity to appear before this subcommittee to express our views with regard to H.R. 3818, a bill by Congressman Harkin to amend FIFRA. We would like to address our specific concerns with a number of the major provisions of the bill.

Section 3(b) of the bill strikes the authority of a certified private applicator to supervise the use of "restricted use" pesticides. Under EPA regulations, "use" includes the purchase, transportation and application of the product and other activities connected to product use such as container disposal. There isn't a farmer in the country who hasn't periodically sent his wife or hired man to the store to pick up the extra can/bag of whatever he is applying in order to have enough to finish up the field he is working on. Under the proposed change the farmer would shut down and go to the store himself, or get everyone on the farm certified. We've seen no information to indicate the farmer's wife is more careless or accident prone or otherwise needs to be excluded from helping her husband.

Section 3(d) of the bill would require the Administrator of EPA to give "highest priority" to pre-September, 1978 products used "in substantial volumes" that result in post-harvest residue. We doubt if anyone knows what that means. Does it mean "highest priority" without regard to the level of residues--even residue well below tolerance levels? Does it mean major pesticide products, some of which account for over 10 percent of the total volume of herbic des or insecticides, should be deleted from "priority" because they don't produce post-harvest residue? Farm Bureau wants the prompt re-registration of pesticides, too. But, we do not wish to impose some "off-the-wall" ranking scheme on the Administrator as he attempts to accomplish the job.

Section 7 of the bill would require cancellation of a product if "false, misleading or inaccurate information" is submitted in support of the product. The amendment doesn't say the registrant had to intend to mislead. We suppose this means that registrants who contract for product testing, in order to eliminate any possible

conflict of interest or appearance of conflict, would have to monitor the day-to-day activities of the contract laboratories. Then we will hear that the company presence in the lab might lead to "undue influence". The IBT situation has raised serious questions which require real answers. It should not be used as a tool to simply force more pesticides off the market.

Section 7(d) would effectively deny reconsideration of any product previously removed from the market. Most of the registration and re-registration provisions of FIFRA are predicated on the recognition that scientific knowledge is continuously growing, and decisions to register in previous years should be re-examined in the context of what we know today. A cancellation action, taken years ago, should be given equal treatment. It is possible we know more today, or even that we might have been wrong before.

Section 8 would require commercial applicators to maintain extensive "use" records including time of application, location, quantities, mixtures, and more and make them available to EPA. Why? Over half the pesticides applied in agriculture are applied by commercial applicators. All the "lawn care" people and most structural pest control people are commercial applicators. We're talking about millions upon millions of individual application events. We cannot imagine where EPA would put all the paper, let alone what good it would do.

Section 10 would authorize a person to sue a farmer "who is alleged to be in violation of this act." The provision would not require a "misuse" by the farmer, nor a violation of label requirements, nor even a violation of regulations. Any person, or environmental group, who disagrees with effectiveness of the regulation to implement the Act need only find a farmer and sue him. His use of a pesticide may have led to some unforeseen minor, repairable environmental event. The suit would say the law (as amended by the Harkin bill) requires "protection of the environment." The farmer, through no fault of his own, could be found guilty and required to pick up the litigation costs to boot. Although the bill imposes a number of deadlines on EPA intended to speed things up, this subsection, plus provisions of Section 7 b) makes clear the bill's intent to greatly increase the litigation activities initiated under FIFRA--litigation activities that will grind the process to a halt, virtually assuring that re-registration cannot be achieved for years. The statutory deadlines coupled with certain litigation will produce a "catch-22" situation that will result in removal of dozens of important agricultural chemicals from the market for procedural reasons rather than environmental or health concerns.

Section 15 of the bill would authorize OSHA to write pesticide exposure regulations and enforce them on the farm. The intent of this section is unclear. It would take OSHA a minimum of two years to promulgate regulations--longer if they were sued. Once OSHA was ready to go, they could turn their (current) 1210 inspectors, spread over

the 28 states currently under federal OSHA jurisdiction with 3 million worksites of responsibility, loose on agriculture. That scenario of delayed regulations and totally inadequate number of inspectors must be compared to today's situation of "regulations in place" and over 40,000 annual state inspections. If the intent of the provision is to leave farmworkers virtually unprotected by any inspection or enforcement program, the amendment would succeed; but, it is not responsible public policy.

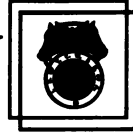
Section 17(b) calls for federal regulations which establish "buffer zones" in farmers' fields. The last time this concept surfaced, EPA was urged to require farmers to leave strips of 100 yards to a quarter of a mile untreated around the edge of fields. Aside from the devastating impact this would have on the effectiveness of pest control programs where farmers could spray, it would eliminate pest control programs for many farmers with smaller fields, and all urban vermin control programs, mosquito control programs, lawn care applications, and hospital bacterial control programs. "Protection of individuals present in the vicinity of areas treated" is implicit in the existing law. This proposal makes a mockery of the concept of "people protection."

Farm Bureau opposes H.R. 3818. The bill will not enhance environmental protection. It would not lead to better protection of people on the farm, adjacent to farms, or the public at large. Its impact would be devastating to agriculture and to the public. There is no conflict between responsible environmental protection and agriculture. This bill is anti-agriculture and anti-environmental protection. We urge its defeat.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
CHAUFFEURS • WAREHOUSEMEN & HELPERS
OF AMERICA
25 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001

OFFICE OF
• JACKIE PRESSER •
GENERAL PRESIDENT

November 1, 1983




The Honorable George E. Brown, Chairman
Subcommittee on Department Operations, Research
and Foreign Agriculture
Longworth House Office Building, Room 1430
Washington, D. C. 20515

Dear Congressman Brown:

As the representative of thousands of workers employed in the application of pesticides and the transportation and handling of pesticide-treated commodities, the International Brotherhood of Teamsters endorses legislation to reform the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). We are deeply concerned about numerous loopholes in the current law which have allowed the circumvention of safety standards for the proper use and registration of pesticides.

The proposed legislation, called the Federal Insecticide, Fungicide and Rodenticide Reform Act, is aimed at closing the loopholes of the existing law. For example, the proposed legislation will assure that all applicators (not just their supervisors) of these deadly chemicals are certified. Under the proposed legislation, pesticide labels will show warnings of such health effects as cancer, birth defects, and reduced sperm counts. Also, all pesticide applicators will be guaranteed safety and health protection under the Occupational Safety and Health Administration.

We strongly urge you to vote H.R. 3818 into law. Your consideration of our views on this matter is greatly appreciated.

Sincerely,

R.V. Durham, Director
Safety and Health Department

RVD:nfb

cc: General President Jackie Presser
Mr. Paul R. Locigno, Director, Governmental Affairs
Ms. Suzanne J. Kossan, Industrial Hygienist
Mr. David A. Sweeney, Director, Legislative Department

ROBERT F. HARRIS
President
RONDA ALLISON
Secretary-Treasurer

NOV 6 1963

A case in point is our recent efforts to get ethylene dibromide (EDB) banned for use as a grain and grain milling machinery fumigant. Scientists at the National Cancer Institute stated years ago that EDB is the most carcinogenic substance they every tested. However, it has taken EPA six years and 2 sets of Congressional hearings to finally act to ban EDB - only now the ban is likely to be delayed for one to two years pending administrative hearings. The irony is that while our members are the people that are being exposed to EDB, we have no legal standing to request a hearing to ask EPA adopt stricter measures. On the other hand, the companies that use the fumigant and the fumigant manufacturers have a right to request a hearing to ask EPA to weaken agency action. Similar inequalities pervade the current FIFRA law. (See enclosed letters sent to EPA.)

Vice Presidents
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LENORE MILLER
ROSEMARY TRUMP

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It is in light of these many deficiencies in the current FIFRA law that the Food and Allied Service Trades Department, AFL-CIO strongly supports the Federal Insecticide, Fungicide and Rodenticide Reform Act of 1983 (HR 3818). We also commend the efforts of the National Coalition Against the Misuse of Pesticide (NCAMP) in working for the adoption of these vitally needed changes.

While it is too late for many of our members that have already suffered from pesticide overexposure, it is not too late to protect our members that will use these chemicals in the future. Your support of this legislation is sincerely appreciated. If there is any other information or material that we can provide, please do not hesitate to contact us.

Sincerely,

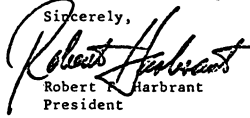


Robert F. Harbrant
President

cc: Robert Willis, President
American Federation of Grain Millers

EPA has an obligation to protect the over 100,000 workers and the millions of consumers from the health risks of this workplace poison. We urge the agency to proceed to with an emergency ban of the use of this chemical on grain and as a spot fumigant in the milling industry. With substitutes readily available, the failure to act in an expedited manner in this instance, may only result a national tragedy.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert F. Harbrant". The signature is fluid and cursive, with the first name "Robert" being particularly prominent and stylized. It is positioned above the printed name and title.

Robert F. Harbrant
President

September 30, 1983

ROBERT F. WARDMAN
President
RONDA ALLAN
Executive Director

As representative of 40,000 grain elevator/mill workers, we are deeply disturbed by the failure of the Environmental Protection Agency to immediately suspend the use of EDB in the grain and milling industry. Allowing the use of ethylene dibromide to continue in this industry, which could be up to two years pending court challenges, will continue to expose the nation's 225,000 grain handlers, as well as millions of consumers to risks EPA itself has claimed are "greater than the social economic and environmental benefits of these uses."

I was appalled to learn that your agency is only now collecting data to determine if emergency situation exists; a determination that should have been made three years ago when EPA first proclaimed its plans to cancel this deadly fumigant.

After waiting for six years for EPA action, we do appauld EPA's willingness to finally move forward. However, it appears that special interest politics continues to dominate the rulemaking process. EPA's action today, to allow the use of EDB is clearly not in the best interest of this nation's grain handlers and consumers.

Sincerely,
Robert Willis
Robert Willis, President
American Federation of Grain Millers

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Migrant Legal Action Program, Inc.

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(800) 424-9425

Nov. 2, 1983

Chairman George Brown
House Agricultural Subcommittee
on Department Operations, Research
and Foreign Agriculture
U.S. House of Representatives

Dear Chairman Brown:

On behalf of farmworker clients I want to commend you again for your efforts to help enact Rep. Tom Harkin's pesticide reform bill, H.R. 3818.

As you well know all Americans are protected by H.R. 3818, but farmworkers are special beneficiaries. I testified last year about the numbers of farmworkers and farmers who have been injured and killed by exposure to deadly toxic pesticides. A recent farmworker death in Bryan, Texas illustrates how enactment of the bill might have prevented use of the pesticide responsible for his death and for injuries to hundreds of other persons occupationally exposed to dangerous pesticides.

Zacarias Ruiz died August 5 after applying Dinoseb from a hand-sprayer on weeds in cotton for seven to ten days. Although he was hired to apply toxic pesticides he was not trained or certified as an applicator; he could neither read nor write English (assuming his employer permitted him access to the Dinoseb label) and was under no medical surveillance in spite of his dangerous occupation. The Texas state medical examiner's autopsy reported Ruiz died of accidental exposure to Dinoseb. The Dinoseb label permits anyone to buy and apply it without restriction, i.e. protective clothing, training, certification or surveillance. Moreover, the label advises "symptomatic treatment" on exposure (i.e. treatment with aspirin). In fact, aspirin enhances poisoning according to EPA's own manual "Recognition and Management of Pesticide Poisonings" (3rd ed., 1983).

EPA has known that hundreds of persons including 40-60 California farmworkers yearly since 1976 have been injured by Dinoseb. EPA also has known that Dinoseb injured many persons in Europe. Despite this EPA has automatically re-registered Dinoseb without any additional label use restrictions and has announced no plans to cancel its usage. If H.R. 3818 had been enacted and enforced when Dinoseb was first discovered over 30 years ago, it would most likely not have been registered.

-2-

Chairman Brown

The registrants of Dinoseb lacked essential health and safety tests which include how the product affects farmworkers and other exposed persons. Three of seven EPA required safety and health tests were not completed. H.R.3818 cures this problem. If tests are incomplete, then after proper notification and time deadlines, the product is cancelled.

Dinoseb's registrants submitted false and misleading data on the product based on fraudulent testing by the Industrial Bio-Test Labs (whose owners were convicted recently for fraudulent testing of 140 EPA registered pesticides). H.R.3818 requires the immediate cancellation of products registered with false or misleading data.

Dinoseb is not the most dangerous pesticide which farmworkers and farmers are routinely exposed to-- it is only one of dozens of agricultural chemicals which should be either cancelled or severely restricted because of acute or chronic adverse human or environmental health effects.

We hope your subcommittee and Congress promptly passes the Harkin bill to prevent future tragedies to our nation's farmworkers, farmers and their families.

Yours truly,



Charles Horwitz
Staff Attorney

Enclosures

cc: Members, Subcommittee on
Department Operations, Research
and Foreign Agriculture

TO: Interested Parties
 FROM: Charles Horwitz
 RE: Why Farmworkers Need to Know the Toxic Substances They Are
 Occupationally Exposed to
 DATE: June 29, 1983

FARMWORKERS ARE OFTEN SEVERELY HARMED BY PESTICIDE MISUSE

Over five million farmworkers labor in agriculture each year in the United States.^{1/} They have a special need to know the toxic substances they are exposed to. Accurate figures on the total numbers of farmworkers exposed to or injured by pesticides in the United States are unavailable. However, many studies show that the problem is serious. An EPA emergency room study in 1981 disclosed approximately 1,200 farmworkers occupationally poisoned by pesticides.^{2/} Another EPA study disclosed approximately 340 farmworkers occupationally poisoned who were admitted to hospitals in 1976.^{3/} Nearly 100 farmworker pesticide poisoning incidents were treated by federally funded migrant health clinics and reported to EPA in 1982.^{4/}

According to the National Safety Council there is a death rate of 66/100,000 in agriculture which is considerably above the 18/100,000 industry average. Agriculture had the third highest rate of all industries.^{5/}

In 1970, an official of the U.S. Department of Health, Education and Welfare estimated, for the nation as a whole, that 80 persons are killed and 80,000 are injured annually as a result of the improper use of agricultural pesticides. Many of these victims are farmworkers.^{6/}

California is the only state which requires the reporting of pesticide injuries.^{7/} The following agricultural occupational pesticide poisonings were reported by physicians to the California State Departments of Health Services, Food and Agriculture, and Industrial Relations:^{8/}

<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
1,624	1,438	1,549	1,731	1,791

Although indicative of widespread pesticide exposure, the California figures under-report the problem. For example, a 1976 report by the California Health Department described a major field worker exposure incident involving 118 persons with systematic

illness. Only six of these cases were recorded because no physician filed a report on the remaining 112.^{9/}

Ephraim Kahn, M.D., Chief of the Epidemiological Laboratory of the California State Department of Health, estimated that the reported California cases are no more than one percent of the actual number.^{10/} If Kahn is correct, then the California figures must be multiplied by 100 for each year to arrive at an accurate estimate of injuries in that state. Thus, for 1981, the total injury rate for agricultural workers in California would be 179,100 (1791 x 100).

Many surveys and epidemiological studies confirm the seriousness of pesticide poisoning among farmworkers. Of 1120 California farmworkers surveyed in the San Joaquin Valley, 15% received medical attention for pesticide poisoning symptoms compared to less than 1% in a control group.^{11/}

In 1980, of 445 Florida farmworkers surveyed, 48.5% reported they had been sprayed directly with agricultural chemicals at least once during their occupational careers. Almost none said they had any idea which chemical they had been sprayed with. Almost 8290 came into contact with agricultural chemicals "occasionally," and 43.5% came into contact with them "frequently."^{12/}

A 1982 Tulare County, California survey of 470 farmworkers indicated a high incidence of dermal (44%), eye (26%), neurological (44%), respiratory (7%), and gastro-intestinal problems caused by exposure to pesticides and fertilizers.^{13/}

One leading researcher found death by accidental trauma was unusually frequent among pesticide applicators. There was an association between high serum pesticide levels and the subsequent appearance of hypertension, arteriosclerotic, cardiovascular disease and perhaps diabetes.^{14/}

Apart from immediate, severe and/or acute pesticide poisonings, farmworkers are exposed to low level dosages which may cause adverse delayed health effects such as birth defects, reproductive and genetic damage and cancer.^{15/} According to one expert:

Today, in the United States, ... with the recognition that such conditions as male sterility, neurological and renal disease, cancer and teratogenic effects and behavioral disorders may be pesticide related, the health significance of chronic exposure is becoming increasingly important.^{16/}

In addition to pesticides and fertilizers, there are many other toxic substances in the agricultural workplace. Naturally occurring chemical agents such as aflatoxin in corn, mineral dust, grain dust, and special environmental substances arising from swine and livestock confinement cause farmworkers serious and life-threatening health

problems.^{17/} Respiratory problems among grain workers have been found to be comparable to cotton-mill workers.^{18/}

The following are typical examples of agricultural poisoning incidents:

1. In November, 1982, two children were accidentally sprayed with Dinoseb by a cropduster while waiting for a school bus in Marsing, Idaho. The children suffered headaches, stomach cramps, burning eyes and yellow stains on the skin.
2. In November, 1982, an Oregon farmworker accidentally entered a nursery where pesticides were being applied, and suffered nausea, headaches, shakes, and white blotches on the skin.
3. In September, 1982, an Arizona farmworker was blinded by anhydrous ammonia when a deteriorated hose allowed the chemical to escape and get into the worker's eyes.
4. In September, 1982, farmworkers in Moline, Illinois were sprayed with Malathion, Bravo and Dipel, by a ground application rig; they experienced nausea, vomiting, weakness, and other symptoms.
5. Four British Columbia farmworkers were severely poisoned by Diazon, Phosdon and Top-killer on August 28, 1982. One man, believed to have ingested the pesticides, showed severe neurological symptoms, suffered a heart attack, and lapsed into a coma.
6. In August, 1982, twelve Oregon farmworkers exposed to an unknown pesticide while harvesting broccoli, were injured and unable to work for several weeks.
7. In July, 1982, a female California farmworker was exposed to numerous herbicides and insecticides in the fields during her pregnancy; her child was born without arms or legs.
8. In July, 1982, five farmworkers in Puerto Rico re-entering fields sprayed the night before were poisoned with the pesticide Lannate. The workers experienced diarrhea, vomiting, aches, intoxication and skin problems, causing them to miss work. The workers had not been informed of the health hazards involved and had not been provided protective clothing.
9. In May, 1982, a Florida farmworker applying Toxaphene and Azidrine required emergency hospitalization after inhaling these pesticides.
10. In April, 1982, a worker in Washington State became ill and weak after spraying Endrin on an apple crop. The worker apparently removed his respirator, and may have ingested the pesticide while drinking water.
11. On August 20, 1981, a cropdusting pilot sprayed a pesticide over more than one hundred farmworkers near Marsing, Idaho. The

farmworkers tried to wave him away, but he kept passing low over their heads; some women and children ran away. He returned and sprayed them again.

12. In June, 1981, Pennsylvania farmworkers employed in New Jersey were sprayed by a cropdusting plane while working in the cornfields. They suffered blisters which became painful in the sun and prevented them from working.

13. On May 14, 1981, a 29 year old Mexican farmworker was intoxicated by Temik and subsequently was crushed to death by a tractor near Davis, California. A physician stated that the poisoning contributed to the worker's death.

14. Some 151 farmworkers in Florida, Texas and California in 1980 presented sworn statements to the EPA that pesticide overspray and drift from airplane cropdusting, and other field exposures to pesticide residues, is a daily occupational hazard.

15. In June, 1980, a Wisconsin day care center for farmworker children was sprayed with Parathion and Cosit and Sevin. Several teachers experienced nausea, vomiting, diarrhea and eye swelling.

16. On September 16, 1979, a 24 year old Florida nursery worker died after exposure to the insecticide Temik. The worker was wearing recommended protective clothing including a disposable suit, gloves, boots and a respirator.

17. On March 12, 1979, a farmworker in Homestead, Florida was sprayed with pesticides by a cropdusting airplane and by a field applicator while loading tomatoes. He suffered sores and lesions all over his body and had severe eye problems.

18. In early March, 1979, about 25 farmworkers in Collier County, Florida were sprayed with nitrogen by a cropdusting airplane and suffered sores and skin irritations.

19. Seven farmworkers near Pandoro, Ohio were deliberately sprayed with Ethephon (Ethrel) while they were picketing at a tomato farm on August 28, 1978. One worker suffered chest pains and has been unable to work for six months.

20. During August, 1978, Toxaphene and Orthene sprayed by a cropdusting airplane drifted over a state labor camp near Modesto, California causing nausea, stomach aches, headaches, and eye problems to 14 farmworker children.

21. In June, 1978, near Alton, Colorado, five farmworkers were sprayed with Toxaphene and Parathion by a cropdusting airplane, causing them nausea and headaches.

22. In June, 1978, farmworkers near Grand Rapids, Michigan, suffered sores, breathing difficulties and lung congestion arising from the spraying of Captan.

23. Twelve farmworkers were sprayed in April, 1978, with pesticides by a cropdusting airplane near Edinburg, Texas causing them skin rashes and breathing difficulties.

24. Seven farmworkers were sprayed with Difolatan in fields near Immokalee, Florida in January, 1978. They suffered large sores on their hands for several weeks.

HOW FARMWORKERS ARE EXPOSED TO TOXIC SUBSTANCES

Farmworkers are exposed to toxic chemicals by loading, mixing or applying them directly to crops or livestock; by working in and living nearby fields where chemicals are applied by ground rigs or by cropdusting helicopters or airplanes; by hand-harvesting crops contaminated with chemical residues; by packing or loading crops in the fields which are contaminated; by flagging aircraft which aerially spray pesticides; by cleaning, storing or disposing of chemical drums or containers; by inhaling chemicals in soils and dusts; by eating foods and beverages in the fields exposed to chemical drift; by living and sleeping in barns and labor camps where chemicals are stored; by wearing shoes, hats, gloves and other clothing exposed to toxic chemicals and by cleaning, repairing or handling pesticide handling equipment, irrigators and other farm machinery.^{19/}

INDICATIONS ARE THAT PESTICIDE AND TOXIC CHEMICAL POISONING PROBLEMS ARE WORSENING

U.S. farmers used 661 million pounds of pesticides in 1976, a 38% increase over 1971. Over 60% of U.S. crop acreage received pesticide treatment in 1976.^{20/} In addition U.S. farmers used 70.6 million pounds of fertilizers in 1967; usage increased to 91.4 million pounds in 1978.^{21/} The strong trend towards increased usage of chemicals in agriculture was characterized by the National Agricultural Chemical Association as the "chemicalization of agriculture."^{22/}

CH:mh

FOOTNOTES

- 1/ D. Lillesand, et al., An Estimate of Migrant and Seasonal Farmworkers in the U. S. and Puerto Rico, Legal Services Corp. (1977).
- 2/ Summary of Occupationally-Related Deaths and Poisonings Due to Pesticides, Hazard Evaluation Division, Office of Pesticide Programs, EPA, (October 1982).
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- 4/ K. Grannis, B. Zacovic, Danger in the Field: The Myth of Pesticide Safety, Florida Rural Legal Services Corp. (1980).
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- 6/ S. Rep. No. 91-1282, 91st Cong., 2d Sess., reprinted in [1970] U.S. Code Cong. & Ad. News, 5179-5180.
- 7/ California law requires employers, physicians and insurance companies to report pesticide injuries to state authorities. California Administrative Code, Title 8, § 140,000 et seq.
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- 9/ "Pesticide Residue Hazards to Farm Workers," Proceedings: Western Area Laboratory for Occupational Safety and Health, 175, 177. (May, 1976). The reasons why more farmworker incidents are not reported are set forth at 176 et seq.
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STATEMENT
of the
National Cattlemen's Association
Before the
Subcommittee on Department Operations, Research
and Foreign Agriculture
Committee on Agriculture
U.S. HOUSE OF REPRESENTATIVES
Regarding
H.R. 3818, FIFRA Reform Act
Presented by
Ronald A. Michieli
Vice President,
Natural Resources
National Cattlemen's Association
November 2, 1983

The National Cattlemen's Association is the national spokesman for all segments of the nation's beef cattle industry -- including cattle breeders, producers, and feeders. The NCA represents approximately 245,000 professional cattlemen throughout the country. Membership includes individual members as well as 50 affiliated state cattle associations and 19 affiliated national breed organizations.

Mr. Chairman:

The National Cattlemen's Association is opposed to bill H.R. 3818, the so-called FIFRA Reform Act.

We favor tough and effective implementation of the current law and removal or limitation of pesticide products from the market which are found not to meet current efficiency and safety standards. We believe, however, that the current FIFRA provides the EPA sufficient authority to meet these objectives. The proposed changes to FIFRA neither enhance EPA's statutory mandate nor permit it to perform its functions better than it can under the current law.

Our industry's special interest is to insure adequate, safe and effective pesticide products for animal agriculture. The FIFRA Reform Act conflicts with this objective. There are many provisions of the FIFRA Reform Act that we oppose. This statement only highlights those sections that we find especially disturbing.

Section 3 proposes to prohibit application of restricted use products by workers operating under the supervision of a certified applicator. There has been no showing that such an unreasonable prohibition and burden on certified applicators/managers would in any way improve public safety or the proper application of pesticides. It would be virtually impossible in cattle production operations to certify all applicators of registered products. The practical consequence, and probably the result desired by the supporters of the FIFRA Reform Act, is to limit the use of registered pesticides. We do not believe that the way to address health and environmental issues is to raise unreasonable administrative hurdles to

the lawful use of registered pesticides.

Section 4 of the proposed bill limits the authority of EPA in registering pesticides by introducing a "will endanger" standard. The immediate effect of this change is to eliminate the cost-benefit standard in pesticide registrations. We vigorously oppose this change. We believe that adequate statutory authority exists for the EPA Administration to weigh fairly and responsibly the benefits from pesticides and the risks posed. While health concerns should be reduced or eliminated in administrative review of pesticide use and exposure, changes to the law should not be made to eliminate all risk when there are overriding benefits.

Various sections of H.R. 3818 significantly amend procedures for approving experimental use permits, emergency use of products in special situations, and state registration to meet special local needs. We oppose these extreme limitations. We recognize that EPA and state authorities must responsibly exercise oversight on these departures from the normal registration process. Excessive restrictions on EPA and state discretion only hampers the appropriate use of these provisions and ignores the federal and state authority's familiarity with local needs and expertise to make necessary and responsible decisions.

We appreciate this opportunity to share our views with the Subcommittee. We would be willing, of course, to amplify these comments.





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